AMERICAN

CRIMINAL TRIALS.

BY PELEG W. CHANDLER.

Wm Stoughton

VOLUME I.

BOSTON:

CHARLES C. LITTLE AND JAMES BROWN.

LONDON:

A. MAXWELL, 32 BELL YARD, LINCOLN'S INN.

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MDCCCXLI.

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PREFACE.

THE publication of the following volume may be regarded as an experiment, which, if successful, will demonstrate that the most important and interesting criminal trials, which have taken place in this country, may be rendered acceptable to the general reader, in the form of abridged narrations divested of the technicalities of legal proceedings.

In selecting the cases for publication, the author has been chiefly governed by a desire to present those, which might be interesting to the American reader, not only as illustrative of the morals and manners, but as connected with the religious or political history, of the periods in which they occurred; and, in preparing them for the press, he has attempted to give an account of each case, after a careful examination of all the facts which might throw light upon

it, in the form of a narrative accompanied by such general remarks and reflections as naturally suggested themselves to his mind; no other idea of completeness or unity of purpose being entertained, so far as the present work is concerned, than that every trial should contain all the facts, necessary to make it intelligible by itself and without reference to any other.

Judicial investigations with a view to the discovery and punishment of crimes, as they involve the best interests of society, always excite an attention commensurate with their importance, wherever they are publicly and openly conducted, as in this country and in some of the states of Europe. They exhibit human nature in an infinite variety of positions, and show man "as he is in action and principle, and not as he is usually drawn by poets and speculative philosophers." The circumstances of difficulty and danger, with which they surround the accused, effectually test and develop the character; while, at the same time, they severely task the highest energies of the mind, in mortal struggles for victory, liberty, and, not seldom, life itself. Events and transactions, stranger and more wonderful than the fictions of the most fruitful imagination, are not unfrequently revealed to view, as realities, in the proceedings of criminal tribunals.

It is undoubtedly more interesting to witness in person the proceedings of a criminal trial, than it is to read an account of them in a journal or printed

report; but the latter retains its interest and value, long after the scenes it professes to describe have passed from the memory; and, being a record of facts, ascertained by a tribunal erected for the express purpose of eliciting the truth, it becomes, in process of time, one of the best sources of personal and general history. It is obvious, however, that reports of criminal trials, though intelligible enough at the time of the events which they record, when all the attendant circumstances are fresh in the public mind, soon require to be illustrated by facts from cotemporaneous history, in order to be fully understood and properly appreciated. But, besides this, as the proceedings in judicial tribunals are exclusively directed to the ascertaining of particular facts, they are often meagre in themselves, and afford little or no information concerning many other facts and circumstances, which are essential to enable us to understand the merits of a case. The trial of an offender is but a point in the history of the crime, — a single link of the great chain, which binds together its true character and its effects: the remote circumstances which led to its commission, — the actual inducement, — the relation of the parties concerned, — the detection, and, more than all, the personal history and previous character of the criminal himself, — all become matters of interesting inquiry, in relation to which the naked report of the trial affords no light. There are also many cases, which, at

the time of their occurrence, are so enveloped in mystery, that the guilt or innocence of the accused can only become fully manifest by the lapse of time; and these need to be investigated by the aid of subsequent as well as cotemporaneous events. From these considerations, it is apparent, that a mere collection, however extensive, of criminal trials, republished in their original form, must necessarily be incomplete in many important particulars.

There are two great collections of criminal trials, which deserve the highest consideration and the most careful examination, as models for an American work, namely, the English *State Trials* by Howell, and the French *Causes Célèbres*. In the former, which is a mere republication, the cases are given precisely as they were originally published, without any attempt to render them more complete, or to condense them into the form of narratives; so that the State Trials, however valuable as a work of reference to the historical inquirer or the lawyer, are intolerably dull and unprofitable to the general reader. The French collection, on the other hand, partly from the nature of the cases themselves as well as the mode of their investigation, and partly from the form in which they are given, presents a series of narratives, as interesting and exciting as are to be found in romance or history.

Another work, of a character and tendency somewhat different from those just mentioned, which is

much better known to English and American readers, in general, and has exercised a more decided influence upon society, will be readily recognised as the *Newgate Calendar*. The plan and object of this collection, which has served as a model for a species of literature now unfortunately become popular in this country, are too well known to require any explanation, in this place; or to make it necessary to record here the condemnation pronounced against it by the tribunals of morals and taste. Works of this description, which, by their false and glowing pictures of criminal trials, create an admiration for desperate and wicked men, and excite a sympathy for their fate, in minds of kindred depravity, cannot be too strongly deprecated as injurious to the best interests of society.

The plan of the present work more nearly resembles that of the French collection than of any one in our own language. The design is to give a historical sketch of each case, upon a careful examination and consideration of all the facts connected with it, in the form of an abridged narrative. But it is obvious, that no general plan of a work like this can be so comprehensive, as not to require to be variously modified in respect to each particular trial. It is true of some criminal trials, that they explain themselves, and then it is only necessary to give a report of the actual proceedings, with an attempt, perhaps, to adjust the incidents so as to produce the most harmo-

nious or striking effect. In some instances, the trial is the least part of the history of a case, and may be merely mentioned as a collateral fact. In others, the entire interest of the case depends upon the actual proceedings at the trial, and here care must be taken to give the full dramatic effect, by suffering the actors in the exciting scene to speak for themselves. In other cases, the arguments of the advocates at the bar are the chief points of interest, entirely overshadowing every thing else connected with the trial; and in these it is necessary to present the facts and circumstances which go to illustrate the arguments. It is manifest, therefore, that every criminal trial must have a plan of its own, in order to keep up the interest of the reader, and to preserve the dramatic effect of the scenes and events which it discloses.

It will thus be seen, that the plan of this work is somewhat ambitious; and the execution of it will be vastly more laborious than that of a mere collection of trials, without any attempt to render them more complete, by collating the different reports of each trial, and illustrating it by facts and circumstances drawn from other sources. This labor will be much increased in cases where no regular report has ever been made, which unfortunately is true of many American trials of great interest. The author is sensibly impressed with the difficulties of the task which he has undertaken, but he has entered upon it the more willingly, as, from the nature of the work, it

may at any time be relinquished, if his labors become unsatisfactory to the public, or oppressive to himself. Without the expectation of giving his production the character of completeness which belongs to the State Trials, or the hope of infusing into it the spirit and interest which characterize the Causes Célèbres, he may yet be permitted to remark, that, if his "trials" should not be found in strict accordance with truth, it will not be for the want of industrious research on his part; and if they do not prove to be interesting, it will not be for the want of rich materials to render them so.

There being no necessary connection between the several parts of the intended collection, the volumes of which it is to be composed will be published separately, as they may from time to time be prepared. For this course the author has high authority in the example of a living historian, whose apology he adopts as his own. He is unwilling to travel so long a journey alone, and desires as he proceeds, to correct his own judgment by the criticisms of candor. He also hopes to make to himself friends disposed to place within his reach the sources of information which are essential to success.

Boston, November, 1841.

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TRIAL OF ANNE HUTCHINSON

BEFORE THE

GENERAL COURT OF MASSACHUSETTS,

NOVEMBER, 1637.

A particular account of the celebrated antinomian controversy, in the early history of Massachusetts, with which Anne Hutchinson became completely identified, is contained in a work by Thomas Welde, the minister of Roxbury, published in 1644, and entitled: "A short Story of the Rise, Reign, and Ruin of the Antinomians, Familists, and Libertines, that infected the churches in New England: And how they were confuted by the Assembly of Ministers there: As also of the Magistrates' Proceedings in Court against them. Together with God's strange, remarkable Judgments from Heaven upon some of the chief Fomenters of these opinions; and the lamentable death of Mrs. Hutchinson." The subject is considered, in a more general manner, in Hubbard's History of New England; Hutchinson's History of Massachusetts Bay, and Winthrop's Journal, by Savage; it also forms an interesting topic of remark in Grahame's and Bancroft's Histories of the United States, and Upham's Life of Henry Vane, in Sparks's American Biography.

TRIAL OF ANNE HUTCHINSON.

A SHORT time before the election of Henry Vane as governor of Massachusetts, in 1636, there came over from Alford, in the neighborhood of Boston, England, William Hutchinson and his wife Anne Hutchinson, who settled in Boston, Massachusetts, and "joined the church." They were well connected, of good estate and reputation, and received much attention in the colony. Mr. Hutchinson was chosen several times a representative of Boston in the general court. It was the fate of his wife to exert an influence in the infant commonwealth, wholly unexampled in one of her sex, and to kindle a strife, which has rendered her the heroine of a passage in its history, as singular, interesting, and tragical, as any it contains. The apparently trifling origin of the difficulties, in which she found herself involved soon after her arrival, is not the least remarkable part of her story; and the mistake of magnifying and punishing

that as heresy, which was simple impropriety, or, at most, harmless fanaticism, is not the least instructive portion of the history of her trial and condemnation.

By a long established custom in Boston, besides the meetings for worship on the Lord's day, and occasional lectures as in other towns, there were frequent private meetings of the brethren of the churches for religious exercises. Mrs. Hutchinson, "a woman of a haughty and fierce carriage, of a nimble wit and active spirit, and a very voluble tongue," submitted with impatience to the regulation by which women, at these meetings, were debarred from the privilege of joining in the debates. She therefore set up a meeting of the sisters also, where she repeated the sermons, preached the Lord's day before, adding her own remarks and expositions. The idea was novel; her illustrations of scripture were new and striking; and, being possessed of great subtlety and vivacity of apprehension, she rendered her meetings more interesting to the female portion of the community, than any they attended. Moreover, being "a woman very helpful in the times of child-birth, and other occasions of bodily infirmities, and well furnished with means for these purposes, she easily insinuated herself into the affections of many," who became sincerely and warmly attached to her, and eagerly received all her doctrines. Nor were those who regarded her with favor confined to her own sex. The excellent John Cotton gave her his support and warm approval; and, Henry Vane, one of the most remarkable men of that age, who had left the halls

of his fathers for the wilderness of New England, that he might more freely enjoy the rights of conscience, and who, at the early age of twenty-four, soon after his arrival in the colony, was chosen its governor, became an open and ardent admirer of Mrs. Hutchinson and her doctrines; whether for the purpose of strengthening himself in a political point of view or from sincere belief, it is not necessary now to inquire.

At first, these meetings met the entire approbation of the clergy; but that powerful and somewhat selfish class soon began to look upon them with disapprobation. They became jealous of the influence of a custom, which brought a power to bear on the religious feelings and views of the female portion of their people, dangerous to their own authority, and wholly out of their control. They discovered, also, or thought they discovered alarming heresies in the doctrines which Mrs. Hutchinson promulgated. "At first," said one of their number, "all this was well, and suited with the public ministry, which went along in the same way, and all the faithful embraced it, and blessed God for the good success that appeared from this discovery. But when she had thus prepared the way by such wholesome truths, then she begins to set forth her own stuff, and taught that no sanctification was any evidence of a good estate, except their justification were first cleared up to them by the immediate witness of the spirit, and that to see any work of grace, (either faith or repentance &c.) before this immediate witness, was a covenant of works: whereupon many good souls that had

been of long approved godliness, were brought to renounce all the work of grace in them, and to wait for this immediate revelation: then sprung up also that opinion of the indwelling of the person of the Holy Ghost, and of union with Christ, and justification before faith, and a denying of any gifts or graces, or inherent qualifications, and that Christ was all, did all, and that the soul remained always as a dead organ: but the main and bottom of all, which tended to quench all endeavor, and to bring to a dependence upon an immediate witness of the spirit, without sight of any gift or grace, this stuck fast, and prevailed so as it began to be opposed, and she being questioned by some, who marveled that such opinions should spread so fast, she made answer, that wherever she came, they must and they should spread."

It was also asserted, that Mrs. Hutchinson and her adherents, in addition to their original tenets, received that difficult doctrine of the quakers, afterwards so abhorrent to the colonists, that the spirit of God communicates with the minds of believers independently of the written word; and, in consistency with this, that her hearers received many revelations of future events announced to them by Mrs. Hutchinson, as equally infallible with the prophecies of scripture. But it has been well remarked, that the accounts, which are transmitted to us of such theological discussions, are always obscured by the cloud of contemporary passion, prejudice, and error. Hasty effusions of passionate zeal are mistaken for deliberate sentiments; and the excesses of the zealots

of a party held up as the standard by which the whole body may fairly be tried.

The clergy at length became greatly alarmed at the extent to which their authority and influence were threatened; and they determined to take efficient and energetic measures in opposition to Mrs. Hutchinson and her doctrines. The first synod ever held in America assembled at Newtown, now Cambridge, to consider this new and extraordinary state of things; and, after a three weeks' discussion, no less than eighty-two errors were enumerated and condemned. The modern reader is lost in admiration at the incomprehensible jargon contained in this exposition of false doctrines, and strives in vain to ascertain the practical points of difference between the parties, sufficient to account for the extreme bitterness with which this controversy was conducted on both sides. Enlightened by the experience of religious controversies of his own times, he easily concludes, that the matter was attended with difficulties of a personal nature, having their origin in the peculiar character of the colonists of New England, and difficult to be appreciated at the present day.

The decrees of the synod had little effect on Mrs. Hutchinson. Persuaded of the superior clearness, truth, and simplicity of their system of doctrines, both she and her adherents were impatient of opposition, and attacked the sentiments of their adversaries with an acrimony and invective, which were not likely to be borne with patience. With the eagerness and impetuosity of female feeling, they did not hesitate to brand with terms of heretical and contempt-

uous designation, every inhabitant of the colony, and particularly every minister, whose views did not coincide with their own.

These religious disputes at length assumed the highest political importance. Nearly all the clergy, except Cotton and John Wheelwright, clustered together in defence of their influence. The latter, a brother-in-law of Mrs. Hutchinson, increased the flame by a fast day's sermon, in 1637, in which he made use of some objectionable expressions; and he was examined before the general court for sedition and contempt.[1] In the midst of this excitement, the general elections came on. The struggle for power by rival religious factions, always arduous and severe, was rendered peculiarly interesting at the present time, from the consideration that the arm of civil power would be brought to bear upon the defeated party. The excitement throughout Massachusetts was unprecedented. John Winthrop, the father of the colony, led the opposition, and was supported by all the churches, except those in Boston. Their success was complete. Winthrop was chosen governor; Vane and all his party were left out of office.

[1] There is a copy of this sermon among the manuscripts in the archives of the Massachusetts Historical Society. Its character is not such as to justify the charge of sedition and contempt, nor to prevent the present age from regarding the subsequent proceedings against Wheelwright as an example of ecclesiastical tyranny. The reader, curious in relation to the religious discussions of this period, is referred to the first volume of Winthrop's Journal, by Savage. The notes of the distinguished editor, himself a lineal descendant of Anne Hutchinson, are in the highest degree instructive and not less amusing.

Most stringent measures were immediately adopted to carry into effect the decrees of the synod and to put an end to the antinomian heresy. The first measure, to prevent the increase of a faction esteemed so dangerous, was a law by the party in power, that none should be received within the jurisdiction, but such as should be allowed by some of the magistrates. After vainly opposing this act of intolerance, and leaving a memorial of his dissent, Vane returned to England. The court then sent for Wheelwright, and requiring of him an acknowledgment of his offence, he refused it and justified his conduct; but the court resolved that it tended to disturb the civil peace, disfranchised and banished him, allowing him fourteen days to settle his affairs. He claimed an appeal to the king, but the court resolved, that an appeal did not lie in the case, and he was compelled to leave the colony. Some of his friends were punished in various ways, and a part of them followed him into banishment.[1]

"All these were but young branches, sprung out of an old root; the court had now to do with the head of this faction, *Dux fœmina facti*, a woman had been the breeder and nourisher of all these distempers, one Mistress Hutchinson;" and she was next called to take her trial before the general court and many elders, at Newtown, now Cambridge, in No-

[1] They removed to the banks of the Piscataqua, and, at the head of tide waters on that river, they founded the town of Exeter. Wheelwright afterwards removed to Hampton and from thence to Salisbury. He was restored in 1644, upon a slight acknowledgment. He lived to be the oldest minister in the colony, and died in 1680.

vember, 1637. The proceedings exhibit, in a striking manner, the arbitrary character of this popular tribunal, and the entire disregard of the fundamental principles of the common law in the modes of judicial procedure at that day. It is impossible to escape the conviction, that Mrs. Hutchinson was tried by men, to whom religious toleration was hateful; who were previously determined to convict her, and made use of the form of a trial to find some better pretext, than they already had, to accomplish their designs. Accordingly, she was subjected to a most tedious, severe, and trying examination by the governor, the lieutenant governor, and the principal men in the colony, for two days. But during the whole of it, she exhibited a most extraordinary degree of talent, learning, skill and fortitude. "She was cunning as well as fanatical."[1]

"You are called here," said governor Winthrop, at the commencement of these extraordinary proceedings, "as one of those that have troubled the peace of the commonwealth and the churches here; you are known to be a woman that hath had a great

[1] A manuscript report of this trial was seen by Hutchinson, the historian of Massachusetts Bay, and is printed in the appendix to his second volume. By whom, and when it was prepared, he does not inform us, if he knew. The account of the proceedings, in Welde's Short Story, is less minute. Welde was a member of the court, and a bitter opponent of Mrs. Hutchinson; he took an active part against her, on her trial. His work is characterized by the usual bitterness of religious controversial writings of that day. Some of his stories are yet more foolish than false, and more disgusting than either. The edition, London, 1644, is in the Boston Athenæum; a second edition, London, 1692, is in the library of Harvard University.

share in the promoting and divulging of those opinions that are causes of this trouble, and to be nearly joined, not only in affinity and affection, with some of those the court hath taken notice of, and passed censure upon, but you have spoken divers things, as we have been informed, very prejudicial to the honor of the churches and ministers thereof, and you have maintained a meeting and an assembly in your house that hath been condemned by the general assembly as a thing not tolerable nor comely in the sight of God, nor fitting for your sex, and notwithstanding that was cried down, you have continued the same; therefore we have thought good to send for you to understand how things are, that if you be in an erroneous way, we may reduce you, that so you may become a profitable member here among us; otherwise if you be obstinate in your course, that then the court may take such course that you may trouble us no farther. Therefore I would entreat you to express, whether you do not hold and assent in practice, to the opinions and factions that have been handled in court already, that is to say, whether you do not justify Mr. Wheelwright's sermon and the petition."[1]

"I am called here," was the appropriate and striking answer of Mrs. Hutchinson, embodying a great principle of the common law, which requires every offence to be set forth with clearness

[1] After the court had pronounced Mr. Wheelwright's fast day sermon seditious, a petition or remonstrance was sent to them by a large number of the citizens of Boston, which was also considered to be seditious by the court, and several who signed it were punished.

and certainty, "to answer before you, but I hear no things laid to my charge."

"I have told you some already, and more I can tell you."

"Name one, sir."

"Have I not named some already?"

"What have I said or done?"

"Why, for your doings, this, you did harbor and countenance those that are parties in this faction, that you have heard of."

"That's matter of conscience, sir."

"Your conscience you must keep, or it must be kept for you."

"Must I not, then, entertain the saints, because I must keep my conscience?"

"Say, that one brother should commit felony or treason, and come to his other brother's house, if he knows him guilty, and conceals him, he is guilty of the same. It is his conscience to entertain him, but if his conscience comes into act in giving countenance and entertainment to him that hath broken the law, he is guilty too. So if you do countenance those that are transgressors of the law, you are in the same fact."

"What law do they transgress?"

"The law of God and of the state."

"In what particular?"

"Why in this among the rest, whereas the Lord doth say honor thy father and thy mother, which includes all in authority; but these seditious practices of theirs have cast reproach and dishonor on the fathers of the commonwealth."

"Do I entertain, or maintain them in their actions, wherein they stand against any thing that God hath appointed?"

"Yes, you have justified Mr. Wheelwright's sermon, for which you know he was convict of sedition, and you have likewise countenanced and encouraged those that had their hands to the petition."

"I deny it; I am to obey you only in the Lord."

"You have joined them in the faction."

"In what faction have I joined with them?"

"In presenting the petition."

"But I had not my hand to the petition."

"You have counseled them."

"Wherein?"

"Why, in entertaining them."

"What breach of law is that, sir?"

"Why, dishonoring of parents."

"But put the case, sir, that I do fear the Lord and my parents, may not I entertain them that fear the Lord, because my parents will not give me leave?"

"If they be the fathers of the commonwealth, and they of another religion, if you entertain them, then you dishonor your parents and are justly punishable."

"If I entertain them as they have dishonored their parents, I do."

"No, but you by countenancing them above others put honor upon them."

"I may put honor upon them as the children of God, and as they do honor the Lord."

"We do not mean to discourse with those of your sex upon this," the governor replied, apparently tired

of this part of the subject, "you do adhere unto them and do endeavor to set forward this faction, and so you do dishonor us."

He then took up another subject of complaint against Mrs. Hutchinson; and that was her weekly meetings. These she defended herself with great skill and ability; the custom, she said, was to hold private weekly meetings when she first came to the country. She did not go to them, and was called proud; wherefore she had meetings at her own house. At first they were attended by only five or six; but being tolerated, the number gradually increased, and she conceived it to be proper for her to hold them according to the doctrine in the second of Titus, where the elder women are to teach the younger.

"But," said the governor, "the apostle there means privately; and gives no warrant for such set meetings as yours. Besides, you take it upon yourself to teach many that are elder than yourself. Neither do you teach them that which the apostle commands, 'to keep at home.'"

"Will it please you to answer this, and to give me a rule, for then I will willingly submit to any truth. If any come to my house to be instructed in the ways of God, what rule have I to put them away?"

"Suppose," was the answer, "that a hundred men come unto you to be instructed, will you forbear to instruct them?"

In answer to this, Mrs. Hutchinson said, that such a course must, in her opinion, be unauthorized by scripture; but if one man should come to her and

ask her instruction upon religious matters, she conceived that she might give it to him.[1]

"Here is my authority, Aquila and Priscilla took upon them to instruct Apollo more perfectly, yet he was a man of good parts, but they being better instructed, might teach him."

"See how your argument stands," answered the governor, "Priscilla with her husband took Apollo home to instruct him privately, therefore Mistress Hutchinson, without her husband, might teach sixty or eighty!"

"I call them not," was the reply, "if they come to me, I may instruct them."

"Your course," said the governor at length, "is not to be suffered, for besides, that we find such a course as this to be greatly prejudicial to the state; besides the occasion that it is to seduce many honest persons that are called to those meetings, and, your opinions being known to be different from the word of God, may seduce many simple souls that resort unto you; besides that the occasion which hath come of late, hath come from none but such as have frequented your meetings, so that now they are flown off from magistrates and ministers, and this since they have come to you; and, besides, that it will not well stand with the commonwealth that families should be neglected, for so many neighbors and dames and so much time spent; we see no rule of God for this, we see not that any should have authority to set up

[1] Here the court gave the accused liberty to sit down, "for her countenance discovered some bodily infirmity."

any other exercises besides what authority hath already set up; and so what hurt comes of this you will be guilty of and we for suffering you."

It is perfectly apparent, that the real difficulties in this case had not yet been reached. The views of governor Winthrop were generally sensible, and entirely consistent with the mildness and wisdom of that great and good man; but the offences he had enumerated were clearly insufficient to have caused the previous excitement against Mrs. Hutchinson, or to justify the course the court were determined to pursue. The real trouble was with the clergy. The freedom with which this woman had discussed their characters, as ministers of the truth, was intolerable at that age and in Massachusetts Bay. The comparisons, also, which she had instituted between her friend Mr. Cotton and the others, were irritating in the extreme. "Mr. Cotton," she was reported to have asserted, "preached a covenant of faith, but the other ministers were under a covenant of works; they had not the seal of the spirit, so were not able ministers of the New Testament." This becoming public, they advised with Mr. Cotton about it, and a meeting was appointed at his house, during which Mrs. Hutchinson was sent for, and after being questioned, she said, as they asserted, that the fear of man was a snare, and, therefore, she was glad she had this opportunity to open her mind; thereupon she told them, that there was a wide difference betwixt Master Cotton's ministry and theirs; that they could not hold forth a covenant of free grace, because they had not the seal of the spirit, and that they were not able ministers of the New Testament.

This conversation was now related by the ministers who heard it, with no little zeal and animation, and they undoubtedly made the most of it; for the accused denied with firmness and spirit, that she had ever made the remarks in the manner and to the extent that they asserted; and she required that the witnesses should be sworn to what they had spoken.

"The ministers," she said, "come in their own cause. Now the Lord hath said that an oath is the end of all controversy; though there be a sufficient number of witnesses, yet they are not according to the word; therefore I desire they may speak upon oath."

"Well," replied the governor, "it is in the liberty of the court, whether they will have an oath or no; and it is not in this case as in the case of a jury. If they be satisfied, they have sufficient matter to proceed."

This claim by Mrs. Hutchinson troubled the court exceedingly; they were also astonished at the hardihood, which should doubt the solemn statements of the ministers in matters of fact.

"An oath," said the deputy from Watertown and a ruling elder there, "is of a high nature, and it is not to be taken but in a controversy; and, for my part, I am afraid of an oath, and fear that we shall take God's name in vain."

"We are ready to swear if we may see a way of God in it," said Hugh Peters.[1]

[1] The minister of Salem, and most active in the measures taken against Mrs. Hutchinson. "He was a republican of enlarged

"I am persuaded," said another, "that Mrs. Hutchinson and many other godly-minded people will be satisfied without an oath."

"Admit they should be mistaken," said another, "you would make them sin if you urge them to swear."

"They are witnesses in their own cause," was the reply; "if they do accuse me, I desire it may be on oath. An oath is the end of strife, and it is God's ordinance."

Here there was a great commotion and whispering among the ministers. Some drew back; others were "animated on." At length, "the court, being weary of the clamor, and that all mouths might be stopped, required three of the ministers to take an oath, and thereupon they confirmed their former testimony."

One or two spoke in favor of the accused, to the effect, that her speeches had been exaggerated by the witnesses against her. Mr. Coggershall was present at the conversation alluded to, and did not understand her to say all that was alleged against her.

"How dare you look into the court to say such a word?" said Hugh Peters.

"Mr. Peters takes it upon him to forbid me, and I shall be silent," was the reply; and he did not speak again.

Mr. Cotton, also, denied the accuracy of the witnesses in some measure. He ventured to defend the

spirit, great energy, and popular eloquence;" the same who was afterwards executed in England for high treason, and whose arraignment, trial, and execution were scenes of more wanton injustice, than the cause in which he was now engaged.

accused to some extent, and brought upon his own head much of the feeling against her. He seems at one part of the trial to have been in danger. Dudley, the deputy governor, bore hard upon him, and Hugh Peters showed, that he was well disposed to bring him to trial. The other ministers treated him coldly, but he was protected by the governor.

Mrs. Hutchinson soon avowed sentiments which the court eagerly laid hold of, and which saved them the trouble of further evidence.

"If you please to give me leave," she said, "I shall give you the ground of what I know to be true. Being much troubled to see the falseness of the constitution of the church of England, I had like to have turned separatist; whereupon I kept a day of solemn humiliation and pondering of the thing; this scripture was brought unto me — he that denies Jesus Christ to be come in the flesh is antichrist — this I considered of and in considering found that the papists did not deny him to be come in the flesh, nor we did not deny him — who then was antichrist? Was the Turk antichrist only? The Lord knows that I could not open scripture; he must by his prophetical office open it unto me. So, after that, being unsatisfied in the thing, the Lord was pleased to bring this scripture out of the Hebrews. He that denies the testament denies the testator, and in this did open unto me and give me to see, that those which did not teach the new covenant had the spirit of antichrist, and upon this he did discover the ministry unto me, and, ever since, I bless the Lord, he hath let me see which was the clear ministry and which the wrong. Since that

time I confess I have been more choice, and he hath let me to distinguish between the voice of my beloved and the voice of Moses, the voice of John Baptist and the voice of antichrist, for all those voices are spoken of in scripture. Now, if you do condemn me for speaking what in my conscience I know to be truth, I must commit myself unto the Lord."

Nowell. How do you know that that was the spirit?

Mrs. H. How did Abraham know that it was God that bade him offer his son, being a breach of the sixth commandment?

Deputy Governor Dudley. By an immediate voice.

Mrs. H. So to me by an immediate revelation.

Dudley. How! an immediate revelation?

Mrs. H. By the voice of his own spirit to my soul. I will give you another scripture, Jer. xlvi. 27, 28 — out of which the Lord showed me what he would do for me and the rest of his servants. But after he was pleased to reveal himself to me, I did presently like Abraham run to Hagar. And, after that, he did let me see the atheism of my own heart, for which I begged of the Lord that it might not remain in my heart; and, being thus, he did show me this (a twelvemonth after) which I told you of before. Ever since that time I have been confident of what he revealed unto me. When our teacher came to New England, it was a great trouble unto me, my brother Wheelwright being put by also. I was then much troubled concerning the ministry under which I lived, and then that place in the thirtieth of Isaiah was brought to my mind. "Though the Lord give

you the bread of adversity and water of affliction, yet shall not thy teachers be removed into a corner any more, but thine eyes shall see thy teachers." The Lord giving me this promise, and they being gone, there was none then left that I was able to hear, and I could not be at rest but I must come hither. Yet that place of Isaiah did much follow me, "though the Lord give you the bread of adversity and water of affliction." This place lying I say upon me, then this place in Daniel was brought unto me, and did show me that though I should meet with affliction, yet I am the same God that delivered Daniel out of the lion's den, I will also deliver thee. Therefore, I desire you to look to it, for you see this scripture fulfilled this day, and therefore I desire you, that as you tender the Lord and the church and commonwealth, to consider and look what you do. You have power over my body, but the Lord Jesus hath power over my body and soul; and assure yourselves thus much, you do as much as in you lies to put the Lord Jesus Christ from you, and if you go on in this course you begin, you will bring a curse upon you and your posterity, and the mouth of the Lord hath spoken it.

"The case is altered," said governor Winthrop, "and I see a marvelous providence of God, to bring things to this pass. We have been hearkening about the trial of this thing, and now the mercy of God by a providence hath answered our desires, and made her to lay open herself and the ground of these disturbances to be by revelations. There is no use of the ministry of the word nor of any clear call of

God by his word, but the groundwork of her revelations is the immediate revelation of the spirit and not by the ministry of the word; and that is the means by which she hath very much abused the country, that they shall look for revelations and are not bound to the ministry of the word, but God will teach them by immediate revelations; and this hath been the ground of all these tumults and troubles; and I would that those were all cut off from us that trouble us, for this is the thing that hath been the root of all the mischief."

"We all consent with you," was the almost unanimous response of the court. One or two however were not satisfied. One spoke in her favor in a clear and manly style. "I beseech you," he said, in conclusion, "do not speak so to force things along, for I do not for my own part see any equity in the court in all your proceedings. Here is no law of God that she hath broken, nor any law of the country that she hath broken, and therefore deserves no censure; and if she say that the elders preach as the apostles did, why they preached a covenant of grace; and what wrong is that to them, for it is without question that the apostles did preach a covenant of grace, though not with that power, till they received the manifestation of the spirit; therefore, I pray, consider what you do, for here is no law of God or man broken."

He was listened to with great impatience, and, by nearly a unanimous vote of the court, Mrs. Hutchinson was banished out of the liberties, and ordered to be imprisoned till she was sent away. The governor then addressed her.

"Mrs. Hutchinson, the sentence of the court you hear is, that you are banished from out of our jurisdiction as being a woman not fit for our society; and are to be imprisoned till the court shall send you away."

"I desire to know," said the wretched woman, "wherefore I am banished?"

"Say no more," was the reply, "the court knows wherefore, and is satisfied."

The sentence was then recorded: "Mrs. Hutchinson, the wife of William Hutchinson, being convented for traducing the ministers and their ministry in the country, she declared voluntarily her revelations, and that she should be delivered and the court ruined with their posterity; and thereupon was banished; and in the meanwhile was committed to Mr. Joseph Welde, of Roxbury, until the court shall dispose of her." [1]

But the end was not yet. Anne Hutchinson had another trial to undergo, not less trying to her feelings

[1] The arbitrary character and high authority of the general court of Massachusetts, as exhibited in this trial, are worthy of observation. Mr. Washburn has given an interesting account of the jurisdiction of this court, in his Judicial History of Massachusetts. Until the year 1639, it appears to have exercised the whole power, legislative and judicial, of the colony; and to have held jurisdiction, both in civil and criminal matters. Lechford, in his Plain Dealing, written about 1640, says, that "in the general court are tried all actions, civil and criminal, and also ecclesiastical, especially touching non members, and they say that in the general and quarterly courts, they have the power of parliament, king's bench, common pleas, chancery, high commission and star chamber, and all other courts of England." "They have put to death, banished, fined men, cut off men's ears, whipped, imprisoned men, and all these for ecclesiastical and civil offences, and without sufficient record."

than the one just concluded, and scarcely less important in its consequences. By consent of the magistrates, she was summoned from her place of confinement, to appear before the church in Boston of which she was a member. Here, in the presence of an assembly, which was very great from all parts of the country, she was called upon to retract no less than twenty-nine errors of doctrine, which were specifically set forth and read to her. The first, that the souls of men are mortal by generation, but become immortal by Christ's purchase, she maintained a long time in the face of the church, and in opposition to all the ministers; until, at length, a stranger who was present explained to her the difference between the soul and the life, the first being a spiritual substance, and the other the union of that with the body, when she confessed she saw more light than before, and acknowledged her error on this point. The next erroneous doctrine was, that there was no resurrection of the body; she knew not how Christ could be united to these our fleshy bodies, but she believed that those united to him have in this life two bodies, and that by the resurrection of the body was meant our union with Christ here and hereafter. Upon this point, they could not convince her she was wrong; and a vote of admonition was passed against her, and also against her two sons, because they persisted in defending her, Mr. Cotton "laying it sadly upon them, that they would give way to their natural affection, as, for preserving her honor, they should make a breach upon the honor of Christ, and upon their covenant with the church, and withal tear

the very bowels of their soul, by hardening her in her sin." [1]

The spirit of this remarkable woman at length began to fail. She felt acutely the desertion of her early friend, Mr. Cotton, and was finally prevailed upon to acknowledge at the next meeting, that she had greatly erred; that she had slighted the magistrates at the court, and also the elders of the church; and she confessed, that when she was on trial, she looked at such failings as she apprehended in the magistrates' proceedings, without having regard to the place they were in; that the speeches she then used about her revelations were rash and without ground; and she desired the prayers of the church.

But religious intolerance was not yet satisfied; the spirit of the age had more to accomplish. Simply to reclaim Mrs. Hutchinson from her errors was not, apparently, the object in view. She was feared by the ministers; she had been banished by the court; and some way must be devised to justify her excommunication from the church. Accordingly, the cunning but not unusual course seems to have been adopted by her opponents, of attributing certain inferences to her doctrines as their legitimate results, and then requiring her to renounce these inferences. But she resolutely and firmly denied, that she ever held such sentiments; "and this she affirmed with such confidence as bred great astonishment in many."

[1] The doctrine of the resurrection of the body, apparently of heathen origin, though incautiously asserted in words by christians of many communions, I am glad to find so early disputed in Massachusetts. Savage's note to Winthrop, i. 255.

She was earnestly pressed on all hands "not to stand so obstinately to maintain so manifest an untruth;" but with the utmost spirit, she refused to acknowledge that she had ever maintained or believed the opinions now attributed to her, and she was thereupon excommunicated as a liar! She was commanded to depart out of the assembly; and, passing the threshold, she said; "The Lord judgeth not as man judgeth, better to be cast out of the church than to deny Christ." "Thus," says a writer of that day, "it hath pleased the Lord to have compassion on his poor churches here, and to discover this great impostor, an instrument of satan so fitted and trained to his service for interrupting the passage of his kingdom in this part of the world, and poysoning the churches here planted, as no story records the like of a woman, since that mentioned in the revelation." [1]

Anne Hutchinson now prepared to leave Massachusetts. Meanwhile, the larger number of her friends, led by John Clarke, and William Coddington, the same who so ably defended her at the trial, proceeded to the south, designing to make a plantation on Long Island, or near Delaware Bay. But Roger Williams welcomed them to his vicinity; and, in March, 1638, his own influence and the powerful name of Henry Vane, prevailed with Miantonómoh, the chief of the Narragansetts, to obtain for them a

[1] Welde. Cotton Mather, in his account of this matter, says: "It is the work of seducers, that they lead captive silly women; but what will you say when you hear of subtle women becoming the most remarkable of seducers?" "Indeed a poyson does never insinuate so quickly, nor operate so strongly, as when women's milk is the vehicle wherein 'tis given." Magnalia, vii. 3.

gift of the beautiful island of Rhode Island. But Anne Hutchinson did not long enjoy the protection of the free and liberal institutions established by this band of voluntary exiles, on the soil which they owed to the benevolence of the natives. Recovering from a transient dejection of mind,—I adopt the language of a living historian,—she had gloried in her sufferings as her greatest happiness; and, making her way through the forest, she traveled by land to the settlement of Roger Williams, and from thence joined her friends on the island, sharing with them the hardships of early emigrants. Her powerful mind still continued its activity; young men from the colonies became converts to her opinions; and she excited such admiration, that to the leaders in Massachusetts it "gave cause of suspicion of witchcraft." She was in a few years left a widow, but was blessed with affectionate children. A tinge of fanaticism pervaded her family; one of her sons, and Collins, her son-in-law, had ventured to expostulate with the people of Boston on the wrongs of their mother. But would the Puritan magistrates of that day tolerate a censure of their government? Severe imprisonment for many months was the punishment inflicted on the young men for their boldness. Rhode Island itself seemed no longer a safe place of refuge; and the whole family removed beyond New Haven to East Chester, in the territory of the Dutch. The violent Kieft had provoked an insurrection among the Indians; in 1643, the house of Anne Hutchinson was attacked and set on fire; herself, her son-in-law, and all their family, save one child, perished by the rude weapons of the savages, or in the flames.

Such was the fate of Anne Hutchinson; a woman of extraordinary energy, comprehension and sagacity; in many of her religious views far beyond the age in which she lived; in intellectual ability, superior to her sex. It was probably her misfortune to be craftily made use of for political purposes, to sustain the power and authority of Henry Vane, and to draw the affections of the people from those who were their leaders in the wilderness; and her religious zeal became mixed up with political strife. The effect upon her mind of the encouragement she received from those in authority was not favorable. The admiration, which was expressed for the depth and vigor of her reasoning powers seems to have elevated in her apprehension the gifts of intellect above the graces of character; and she ventured upon extremes of doctrinal theology and fantastic theories, with a zeal and enthusiasm worthy of objects more fitting for her sex.

The merits of her case can scarcely be fairly judged of at the present day. The accounts transmitted to us are obscured by contemporary prejudice and passion; but it is impossible to doubt that she was one of the most remarkable women of that or any other age. Her understanding was bold, vigorous, and strong; her perceptions were keen; and her character, energetic and masculine, was not deficient in the graces which adorn the female sex. Her influence upon the colonists, in the apprehension of the fathers of the commonwealth, was dangerous in the extreme; and they "saw an inevitable necessity to rid her away, except they would be guilty not onely of their

own ruine but also of the gospel." Of their right to banish her they entertained no doubt; and it was a right they had frequently exercised on other occasions. The pretence, that it was a mere civil proceeding for the preservation of the authority of the magistrates and the suppression of sedition, without any reference to religious doctrine, personal ill-will, or professional jealousy, will not bear a moment's examination. But it would be most unjust to pronounce judgment upon it by the lights of the present age; or to visit it with a severity of condemnation, which would show an ignorance of the difficulties, spiritual and natural, with which the fathers of New England had to contend.

TRIALS OF THE QUAKERS

BEFORE THE

GENERAL COURT AND COURT OF ASSISTANTS,

MASSACHUSETTS, 1656–1661.

The legal proceedings against the quakers by the colonists of Massachusetts Bay were quite informal, and the original documents which have been preserved, are few and incomplete. It is impossible, therefore, to give any thing more than a general statement respecting these trials. The following account of them is derived from the records of the general court; the papers relating to the subject in the archives of the commonwealth, and the early histories of the period referred to. Of the latter, Bishope's New England Judged, is a quaker authority of great weight. It was written in answer to a declaration of the general court made in 1659, in defence of their proceedings. The first part of it was printed in 1661; the second part in 1667, and both united were reprinted, with some abbreviation, in 1703. It is a rare book, and I am indebted for a copy of it to the proprietors of the Library of Friends in Lynn. Among the other works which have been examined are Sewel's History of the Quakers, London, second edition, 1725; Besse's voluminous Collection of the Sufferings of the Quakers, London, 1753; Cotton Mather's Magnalia; Hutchinson's, Hubbard's, and Neale's Histories.

TRIALS OF THE QUAKERS.

The "people called quakers" first became known as a distinct religious class in the north of England, about the year 1644. The commencement of the sect was attended with scenes of turbulence and fanaticism, not unfrequent with the harbingers of a new religious faith, in an age of wild and fantastic theories. It is difficult for us, in the calm and rational deportment of the quakers of the present day, to recognise the successors of those extraordinary enthusiasts, who first received, from the derision of the world, the title which has since become their sectarian denomination. At a time of universal religious intolerance, their doctrines were peculiarly liable to misconstruction; and from the first they were looked upon with disapprobation and abhorrence by every other religious denomination. Every where in the old world they were exposed to persecution. The codes of that day describe them as an "abominable

sect;" and "their principles as inconsistent with any kind of government." Every where they were exposed to perpetual dangers and grievous punishments. They were whipped, imprisoned with felons; kept in dungeons, foul and gloomy; fined, exiled, sold into colonial bondage. Nor could they reasonably expect a better reception from the inhabitants of New England.

The colonists of Massachusetts Bay had no idea of religious toleration; it was preached against as a sin in rulers, which would bring down the judgments of heaven upon the land. They were in fact a corporation, existing by virtue of a charter, and possessed of supreme authority for the purpose of carrying into effect the objects of the grant. Surrounded by new and untried difficulties, and far removed from the restraining influences of the common law of England, they assumed an authority inconsistent with its principles; and the general court extended its jurisdiction to the thoughts as well as the conduct of all within the reach of its power. The government was founded in certain religious doctrines, a denial of which was an offence against the state of the nature of treason. That a part of their number had a right to change their views of religious doctrine or civil government never entered into the apprehension of the majority. John Wheelwright ventured upon extremes and was convicted of sedition; he appealed to the king and was banished. Roger Williams met the same fate. Anne Hutchinson ventured to doubt, and was thrust out of the jurisdiction as unfit for their society. Would the

colonists be less lenient towards such of the quakers as first reached these shores?

When, in July, 1656, Anne Austin and Mary Fisher arrived in the road against Boston, in a vessel from Barbadoes, their trunks were searched and their books burnt by the hangman. Other indignities they suffered, for which there was no authority by law; and, after five weeks of close imprisonment, they were thrust out of the jurisdiction, the jailer retaining their beds for his fees.[1] Eight other quakers arriving in the colony were immediately imprisoned, and sentence of banishment was passed against them all by the court of assistants; the master of the ship in which they came being required to take them away. At this time there was no law whatever respecting quakers. In the following October, a law was made by the general court, which recited, that "whereas there is an accursed sect of heretics lately risen up in the world, which are commonly called quakers, who take upon them to be immediately sent of God, and infallibly assisted by the spirit, to speak and write blasphemous opinions, despising govern-

[1] The ambition of Mary Fisher became enlarged by this treatment, and she traveled alone to Adrianople, where, coming near the grand vizier's camp, she sent him word that there was an English lady, who had something to declare from the Great God to the great Turk. She was admitted to the sultan Mahomet IV., delivered her message, which was received with gravity, and suffered to depart "without hurt or scoff." Bishope remarks, with complacent sarcasm, that she fared better among heathens than among christians. He probably was not aware, that the Turks regard insane persons as inspired. Kelsey, another quaker, experienced less courtesy. He preached in the streets of Constantinople, and, by advice of the English ambassador, was bastinadoed.

ment, and the order of God in church and commonwealth, speaking evil of dignities, reproaching and reviling magistrates and ministers;" and provided that any master of a ship bringing any known quaker within the jurisdiction, should forfeit one hundred pounds, and should give security to carry such quakers back to the place whence he brought them; and on the arrival of such quakers they were to be severely whipped and confined at hard labor in the house of correction. By a subsequent law, persons who should entertain quakers were liable to a fine of forty shillings for every hour's entertainment. Any person defending their "pernicious ways," or attending their meetings was also liable to a fine. Every quaker, after the first conviction, if a man, was to lose one ear, and the second time the other; if a woman, she was each time to be severely whipped; and for the third offence both men and women were to have their tongues bored through with a red hot iron.

Nearly all of these punishments were inflicted upon quakers at different times, but with a directly opposite result from that intended.[1] They construed these severities into an invitation for their presence, and their numbers increased in proportion to the excitement against them. They

[1] The following warrant was actually carried into execution. "To the marshal general or his deputy. You are to take with you the executioner, and repair to the house of correction, and there see him cut off the right ears of John Copeland, Christopher Holder, and John Rouse, quakers, in execution of the sentence of the court of assistants, for the breach of the law, entitled 'Quakers.' Edward Rawson, Secretary."

gloried in their sufferings; they were anxious for martyrdom. Imprisoned, flogged, mutilated, threatened with punishments yet more severe, they were thrust out of the colony, but returned in the first vessels they could obtain. They proclaimed their doctrines, with a bold and fearless confidence that astonished the people; and they suffered the indignities and cruel punishments inflicted upon them, with such mildness, forbearance, and fortitude, as convinced many of the reality of that INNER LIGHT by which they professed to be constantly guided. At the same time, impartial history records, that many of the sect, which, at this day, is remarkable for a guarded composure of language, an elaborate stillness, precision, and propriety of demeanor, were at the time referred to guilty of conduct, "which the experience of a rational and calculating age finds it difficult to conceive." They openly denounced the government of New England as treason. They reviled at all orders of magistrates and every civil institution. They stigmatized a regular priesthood as a priesthood of Baal. Some of them, in the apprehension of the colonists, were guilty of the most revolting blasphemy against the sacraments, which they termed carnal and idolatrous observances. They interrupted public worship in a manner as indecent as it was illegal and unbecoming. The female preachers exceeded their male associates in these acts of frenzy and folly, and excited the utmost disgust among a people remarkable for their staid and sober deportment.

The colonists, incensed beyond measure at this

conduct, and, alarmed at the swarms of quakers who were intruding themselves upon them, threatened them with new punishments, the intolerable severity of which defeated their own objects. The government of Rhode Island, more wise than that of Massachusetts, though having the same horror of this sect, declined to pass laws against it. "For we find," they said in a letter[1] to the general court, "that in those places where these people aforesaid, in this colony, are most of all suffered to declare themselves freely, and are only opposed by arguments in discourse, there they least of all desire to come, and we are informed, that they begin to loathe this place, for that they are not opposed by the civil authority, but with all patience and meekness are suffered to say over their pretended revelations and admonitions, nor are they like or able to gain many here to their way; and surely we find that they delight to be persecuted by civil powers, and when they are so, they are like to gain more adherents by the conseyte of their patient sufferings, than by consent to their pernicious sayings."

In October, 1658, a law was introduced into the general court, providing that every person of the "cursed sect of the quakers," who should be found within the jurisdiction, should be immediately imprisoned without bail until the next court of assistants,[2]

[1] It was written in answer to a letter from the commissioners of the United Colonies. The original is in possession of the Massachusetts Historical Society.

[2] This court was composed of the "governor, deputy governor, and the rest of the magistrates," and corresponded to the present "governor and council." Its jurisdiction was about as extensive in judicial matters as that of the general court.

at which they should have a legal trial, and, being convicted to be of the sect of the quakers, should be banished on pain of death. This law met with great opposition and was at first rejected; but, upon a reconsideration, it was passed by a majority of one vote, with an amendment that the trial should be by a special jury. It met the strong disapprobation of sensible men in Massachusetts and in the other colonies. Two members of the court entered their dissent against it; and one other who was detained at home by sickness would have voted against it, and thus have prevented its passage. The younger Winthrop, governor of Connecticut, expressed much disapprobation at such an extreme proceeding, and made great exertions to prevent the law from being carried into effect.

There was no lack of victims. Three persons were found within the jurisdiction, who had notoriously violated the law, and they were immediately imprisoned. Of these, Mary Dyer, an antinomian exile, had twenty years before left the colony with Anne Hutchinson. Marmaduke Stephenson, previous to his banishment, had made a disturbance in Boston. He acknowledged himself to be a quaker, and declared, that in the year 1656, at Shipton, in Yorkshire, as he was at the plough, he heard an audible voice ordaining him to be a prophet to the nations. William Robinson was from London. At his first examination, he was sentenced to be whipped twenty stripes, for abusing the court. These three having been banished on pain of death, by the court of assistants, Mary Dyer was claimed by her husband

and taken back to Rhode Island. The other two, having come within the colony for the purpose of offering up their lives, determined not to depart; "so they went to Salem and some place thereabout to visit and build up their friends in the faith." As the time drew near for the court to sit, when they knew they would be tried for their lives, they went to Boston, and with them Alice Cowland, "who came to bring linen wherein to wrap the dead bodies of them who were to suffer;" and others who desired to accompany the sufferers to the end. Mary Dyer also returned from Rhode Island; and the three who had thus incurred the penalty of the law were brought before the general court on the 19th of October, 1659, "for sedition and presumptuous obtruding themselves upon us, notwithstanding their being sentenced to banishment on pain of death." They acknowledged themselves to be quakers who had been banished on pain of death, and, on the next day, they were all condemned to die.

When Robinson was sentenced he offered a paper containing a statement, that while he was in Rhode Island, the Lord commanded him to go to Boston and lay down his life there; that he durst not but obey without inquiring further concerning it, believing that it became him as a child to show obedience to the Lord without any unwillingness; therefore he remained in their jurisdiction. Stephenson asserted, that he was commanded by the Lord to leave his wife and children and be a prophet to the nations. He first went to Barbadoes, but hearing that a law had been made in New England, to put the servants

of the living God to death if they returned from banishment, as he considered the thing and pondered it in his heart, immediately there came the word of the Lord unto him saying, "thou knowest not but thou mayest go thither." Soon afterward the word of the Lord came to him saying, "go to Boston with thy friend William Robinson;" and he obeyed the command not in his own will but in the will of God. Sentence of death was then recorded against the prisoners and they were remanded to jail.

The record of these proceedings is as follows. "William Robinson, Marmaduke Stephenson, and Mary Dyer, banished this jurisdiction by the last court of assistants, on pain of death, being committed by order of the general court, were sent for, brought to the bar, acknowledged themselves to be the persons banished; after a full hearing of what the prisoners could say for themselves, it was put to the question, whether William Robinson, Marmaduke Stephenson, and Mary Dyer, the persons now in prison, who have been convicted for quakers, and banished this jurisdiction on pain of death, should be put to death according as the law provides in that case? The court resolved this question in the affirmative; and the governor in open court declared the sentence to William Robinson that was first to the bar; 'William Robinson, you shall go from hence to the place from whence you came, and from thence to the place of execution, and there and then hang till you be dead.' The like sentence the governor in open court pronounced against Marmaduke Stephenson and Mary Dyer, being brought to the bar,

"Whereas William Robinson, Marmaduke Stephenson, and Mary Dyer are sentenced by this court to death for their rebellion, &c.; it is ordered, that the secretary issue out his warrant to Edward Mitchelson, marshal general, for repairing to the prison on the twenty-seventh of this instant October, and take the said William Hutchinson, Marmaduke Stephenson, and Mary Dyer into his custody; and then, forthwith, by the aid of Capt. James Oliver, with one hundred soldiers taken out by his order proportionately out of each company in Boston, completely armed with pike and musketeers with powder and bullet, to lead them to the place of execution, and there see them hang till they be dead. And in their going, and being there and return, to see all things be carried peaceably and orderly. Warrants issued accordingly. It is ordered that Mr. Zachariah Symmes and Mr. John Norton repair to the prison and render their endeavors to make the prisoners sensible of their approaching danger by the sentence of this court and prepare them for their approaching end."

On the afternoon of October 22d, the prisoners were led forth to execution, surrounded by a guard of armed men and several horsemen, with drums beating to prevent the multitude from hearing any thing they might say. "Glorious signs of heavenly joy and gladness were beheld in the countenances of these three persons, who walked hand in hand, Mary being the middlemost." Nothing could exceed the exultation with which they went forth to die; and they called on all to witness that they suffered for the cause of truth. "This," said Mary Dyer, "is an

hour of the greatest joy I ever knew, no ear can hear, no tongue can utter, and no heart can understand the sweet refreshings of the spirit of the Lord which I now feel." The last words of Robinson were, "I suffer for Christ in whom I live and for whom I die." Stephenson said, "This day shall we be at rest with the Lord." Mary Dyer saw her two companions die before her eyes; and ascended the ladder to meet her own fate. Every thing was ready; the rope adjusted to her neck, her extremities tied and her face covered, when a faint shout was heard in the distance, which grew stronger and stronger, and was soon caught and repeated by a hundred willing hearts. "A reprieve, a reprieve," was the cry, and the execution was stopped; but she, whose mind was intently fastened on another world, cried out, that she desired to suffer with her brethren, unless the magistrates would repeal their wicked law.

She was saved by the intercession of her son, but on the express condition that she should be carried to the place of execution and stand upon the gallows with a rope about her neck, and then be carried out of the colony. She was accordingly taken home to Rhode Island; but her resolution was still unshaken, and she was again moved to return to the "bloody town of Boston," where she arrived in the spring of 1660. This determination of a feeble and aged woman, to brave all the terrors of their laws, might well fill the magistrates with astonishment; but the pride of consistency had already involved them in acts of extreme cruelty, and they thought it impossible now

to recede. The other executions were considered acts of stern necessity, and caused much discontent; a hope was entertained till the last moment, that the condemned would consent to depart from the jurisdiction; and when Mary Dyer was sent for by the court, after her second return, governor Endicott said, "are you the same Mary Dyer that was here before?" giving her an opportunity to escape by a denial of the fact, there having been another of the name returned from England. But she would make no evasion. "I am the same Mary Dyer that was here the last general court." "You will own yourself a quaker, will you not?" "I own myself to be reproachfully called so;" and she was sentenced to be hanged on the morning of the next day. "This is no more than thou saidst before," was her intrepid reply, when the sentence of death was pronounced. "But now," said the governor, "it is to be executed; therefore prepare yourself, for tomorrow at nine o'clock, you die!" "I came," was the reply, "in obedience to the will of God, the last general court, desiring you to repeal your unrighteous laws of banishment on pain of death; and the same is my work now, and earnest request; although I told you if you refused to repeal them, the Lord would send others of his servants to witness against them."

At the appointed time on the next day, she was brought forth, and, with a band of soldiers, led through the town, about a mile to the place of execution,[1] the drums beating before and behind her the

[1] These executions are supposed to have taken place on Boston common, probably near where the Hollis street church now stands.

whole distance. When she was upon the gallows, it was told her, that if she would return home, she might come down and save her life. To which she replied, "Nay, I cannot, for in obedience to the will of the Lord I came, and in his will I abide faithful unto the death." Another said, that she had been there before; she had the sentence of banishment upon pain of death, and had broken the law in coming again now, and, therefore, she was guilty of her own blood. "Nay," she answered, "I came to keep bloodguiltiness from you, desiring you to repeal the unrighteous and unjust law of banishment upon pain of death, made against the innocent servants of the Lord; therefore, my blood will be required at your hands, who wilfully do it; but for those who do it in the simplicity of their hearts, I desire the Lord to forgive them. I came to do the will of my father, and in obedience to his will I stand even to death." A minister who was present then said, "Mary Dyer, repent, O repent, and be not so deluded and carried away by the deceit of the devil." But she answered, "Nay, man, I am not now to repent." She was then asked to have the elders pray for her; but she said, "I know never an elder here;" she added that she desired the prayers of all the people of God. "Perhaps," said one scoffingly, "she thinks there is none here." Then looking round she said, "I know but few here." Being again asked to have one of the elders pray for her, she said, "Nay, first a child, then a young man, then a strong man, before an elder in Christ Jesus." She spoke of the other world and of the eternal happi-

ness into which she was about to enter; and "in this well-disposed condition was turned off, and died a martyr of Christ, being twice led to death, which the first time she expected with undaunted courage, and now suffered with christian fortitude." "She hangs as a flag for others to take example by," said a member of the court, as the lifeless body hung suspended from the gallows.[1]

William Leddra was the next who suffered for a violation of this law. After several severe whippings and a tedious imprisonment, he had been banished on pain of death, but soon returned and appeared publicly in Boston; he was immediately seized and chained to a log of wood in prison, where he suffered much from the cold during the winter months. In March, 1661, he was brought to trial before the court of assistants, in Boston. His offence of being a quaker, and returning after banishment on pain of death, was stated to him, when he demanded what evil he had done. The reply was that he had abused authority; he had refused to take off his hat in court, and would say "thee" and "thou." "Will you put me to death," he asked, "for speaking good English, and for not putting off my clothes?" "A man may speak treason in good English." "Is it treason to say 'thee' and 'thou' to a single person?" "Will

[1] Probably the person who made this remark, and, who, tradition says, was himself cut off by an untimely end, had not forgotten the antinomian controversy, in which Mary Dyer became obnoxious twenty years before. She left the colony with Anne Hutchinson; and is the same person of whom Welde, in his Short Story, tells such monstrous tales, which are complacently repeated by Cotton Mather in the Magnalia, book vii. chapter 3.

you return to England?" demanded Broadstreet. "I have no business there," was the reply. "Then you shall go that way," pointing to the gallows. "Will you put me to death for breathing in the air of your jurisdiction? What have you against me? I appeal to the laws of England for my trial. If by them I am guilty, I refuse not to die." But twenty years before it had been "accounted perjury and treason to speak of appeals to the king," and a sneering remark was made on the present occasion, which was long remembered by Charles II., whose royal ear it soon reached. "This year you appeal to England; the next, parliament will send over to inquire; and the third year, the government of England will be changed."

At that moment, Winlock Christison, another banished quaker, suddenly and most unexpectedly entered the court, and took his stand by the side of the prisoner, striking dismay into the minds of all the magistrates, and for a time interrupting the proceedings of the court. "Are you not the Winlock Christison who was banished on pain of death?" demanded the governor. "Yea, I am." "What dost thou here then?" "I am come here," was the answer, "to warn you that you should shed no more innocent blood; for the blood that you have shed already, cries to the Lord God for vengeance to come upon you." He was immediately committed to prison; and Leddra was offered his life, if he would promise to depart and return no more. Refusing this, sentence of death was passed upon him, to take effect on the 14th of March.

On the day previous to his execution, he wrote a long farewell letter to his friends, in which he said: "The sweet influences of the morning star, like a flood distilling into my innocent habitation, hath so filled me with the joy of the Lord in the beauty of holiness, that my spirit is as if it did not inhabit a tabernacle of clay, but is wholly swallowed up in the bosom of eternity, from whence it had its being." After a morning lecture on the 14th of March, the governor and a guard of soldiers came to the prison, where the prisoner's irons were removed, and he took leave of his fellow prisoners. Arrived at the gallows, a stranger among the crowd, who had just come by sea, was deeply affected, and endeavored to interrupt the proceedings. "For God's sake," he cried, addressing the multitude in a loud voice, "take not away the man's life; but remember Gamaliel's counsel to the Jews. If this be of man, it will come to naught, but if it be of God, ye cannot overthrow it: but be careful ye be not found fighters of God." The captain of the guard bade him hold his peace, and he departed with tears, telling them they had no warrant from the word of God, nor power from the king, to hang the man. When the executioner was adjusting the rope to Leddra's neck, he was heard to say, "I commit my righteous cause unto thee, O God." The last words he uttered, were, "Lord Jesus, receive my spirit." The crowd at length dispersed, but a few friends of the deceased who remained caught the body in their arms when it was cut down; and, after the executioner had stript it of the clothing, they were permitted to pay the last tribute of affection to the remains of their friend.

When Winlock Christison was brought to trial, he addressed the court with undaunted courage. "By what law will you put me to death?" "We have a law and by that law you are to die." "Who authorized you to make that law?" "We have a patent which gives us the power." "Have you authority to make laws repugnant to the laws of England?" "No." "Then you are gone beyond your bounds. If the king did but know your hearts as God knows them, he would see that they are as rotten towards him as they are towards God. You and I are subjects of the king, and I demand to be tried by the laws of my own nation. There is no law in England to hang quakers." "But there is a law of England to hang jesuits." "If you put me to death, it is not because I go under the name of a jesuit, but of a quaker. I appeal to my own nation." "You have broken our law," was the reply, "and we shall try you." The jury immediately returned a verdict of guilty; but the magistrates were divided in pronouncing sentence.[1] The governor was irritated at their wavering, and on a second vote there appeared a majority for the doom of death. "What do you gain by it?" said the prisoner, "do not think to weary out the living God by taking away the lives of his servants. For the last man that you have put to death, here are five come in his room. If ye have power to take my life, God can raise up the same principles of life in ten of his servants, and

[1] Probably this hesitation arose from the fact that a letter was received by the court during the trial, from Edward Wharton, another banished quaker, stating that he had returned and was in Salem. He was not sent for by the court.

send them among you in my room, that you may have torment upon torment, which is your portion; for there is no peace to the wicked, saith my God." He was then remanded to prison, and at the next general court, in June, 1661, his case again came up and the following record exhibits the result. "The court, having considered what Wendlock Christopherson could say for himself, in reference to his appeal from the judgment and sentence of the court of assistants in March last, being brought to the bar, judge meet to order that the governor pronounce sentence of death against him in open court, and to declare, that the time of his execution shall be on the thirteenth day of this month of June, presently after the lecture, by warrant from the governor. Provided, nevertheless, that if the said Christopherson, any time before his execution, shall desire the court's favor, and, by a writing under his hand, engage that he will forthwith depart this jurisdiction, and from thenceforth return no more into it, without first having obtained leave from the general court or council; he shall thereupon be discharged. The governor in open court, the prisoner being at the bar, pronounced sentence of death against him, and acquainted him of the court's favor." The prisoner accepted the clemency of the court upon their own terms, and was discharged.[1]

[1] Besse and other quaker writers represent Christison as remaining firm to the last, and the court as releasing him through timidity; but the following, copied from the original, which is still preserved in the archives of the commonwealth, places the matter right. "I, the condemned man, do give forth under my hand, that if I may

At the same session of the general court, the following order was passed respecting two persons who refused to plead. "Judah[1] Browne and Peter Pierson having been indicted at the last court of assistants for quakers, and there standing mute, and refusing to give any answer, and being bound over to this court to answer their contempt, and here standing mute also, the court judgeth it meet to order, that they shall by the constable of Boston be forthwith taken out of the prison and stript from the girdle upward by the executioner, and tied to the cart's tail, and whipt through the town with twenty stripes; and then carried to Roxbury and delivered to the constable there, who is also to tie them, or cause them in like manner to be tied to a cart's tail, and again whip them through the town with ten stripes, and then carried to Dedham and delivered to the constable there, who is again in like manner to cause them to be tied to the cart's tail and whipped with ten stripes through the town, and from thence

have my liberty, and have freedom to depart this jurisdiction; I know not that I shall come into it any more. From the gaol in Boston, 7th day of the 4th month. Winlock Christison." The order of the general court, as entered on the records, was as follows: "Upon the motion of Wendlock Christopherson, the prisoner making known his freedom to depart this jurisdiction; the court grants and orders him his liberty, he departing this government when he shall be let out of prison as soon as may be." The name of this prisoner is called Christopherson on the records, and by Hutchinson. The early quaker writers call him Christison, and he so called himself, as appears by his signature above.

[1] Bishope and Besse call this person *Judith* Brown. They are followed by Mr. Abel Cushing, in his Letters on the First Charter, Boston, 1839. The name is *Judah* on the records of the court and in the original warrant.

they are immediately to depart this jurisdiction at their peril." Immediately after this order on the records of the general court, without the separation of a line, there is an order by the court for a day of thanksgiving to Almighty God, on the 4th of July, 1661, "for the many favors wherewith He hath been pleased to compass us about for so many years past in this remote wilderness!"

These executions of quakers had caused the utmost dissatisfaction in Massachusetts, and the magistrates became conscious of their mistake. Public sympathy was turned towards the sufferers; and the court were obliged to take strong measures to keep away the crowds of citizens, who constantly thronged the windows of the prison where they were confined. At every execution, a large body of armed men was in attendance to prevent disturbance, and soldiers were left to guard the town "while the rest of the citizens went to the execution." Meanwhile, accounts of these proceedings had been carried by quakers to the ears of king Charles, and of the contempt which had been expressed for his government at the trial of Leddra. That monarch, who had other reasons for being dissatisfied with the colonists, immediately granted a mandamus directed to all the governors of New England, requiring them to proceed no farther as to corporeal punishments against quakers, but to send them to England, with their respective crimes specifically set forth, to the end, that they might be disposed of according to law. The quakers in London immediately chartered a vessel, and, the mandamus being committed to Samuel Shattock, who had

been banished from Massachusetts on pain of death, he arrived in the harbor of Boston, in six weeks. The king's messenger and the commander of the ship landed on the day after their arrival, and proceeded directly to the governor's house. Admitted to his presence, he ordered Shattock's hat to be removed, but, after perusing the letters, restored it, and took off his own. After consultation with the deputy governor, he informed the messenger that they should obey the king's command. In the evening, the passengers of the ship came on shore, and, with their friends in town, held a meeting, "where they returned praises to God for his mercy, manifested in their wonderful deliverance."

The general court suspended the execution of the laws against quakers, at their next session, but soon revived them so far as respected "vagabond quakers," who were to be seized by any person and carried before the next magistrate of the shire or any commissioner, and then sentenced to be stripped naked from the middle upwards, and be tied to a cart's tail in the town where they were found, and whipped through that and the other towns, to the extent of the jurisdiction of the colony, provided they should not be whipped through more than three towns; and the magistrate was to specify the number of stripes to be given. A law, conferring such powers on comparatively irresponsible persons, was sure to be abused, and cruelties were practised under it which the modern reader finds it difficult to credit. In 1662, three women, Anne Coleman, Mary Tomkins, and Alice Ambrose, were tied to a cart's tail in Dover,

and whipped, with ten stripes in each town, through Dover, Hampton, Salisbury, Newbury, Rowley, Ipswich, Wenham, Lynn, Boston, Roxbury, and Dedham. Elizabeth Hooton, a woman sixty years old, was whipped in Cambridge, Watertown, and Dedham, with ten stripes in each town. She returned again to Boston, when she was sent to the house of correction; then whipt, led thence to Roxbury, there whipped at a cart's tail, and from thence to Dedham. She again returned, and, after two day's imprisonment, was whipped from the prison-door to the limits of the town, and then sent away for Rhode Island, with a warrant to whip her from town to town. Joseph Nicholson, Jane Willard, and Anne Coleman were whipped through Salem, Boston, and Dedham. It is related that one of the nipples of Anne Coleman's breast was split by the knots of the whip, causing extreme torture.

The account of these and other equally cruel proceedings under this law, is derived from quaker authors, but there is no reason to doubt their general accuracy, although of many of these punishments, being inflicted by the order of local magistrates, there appears to be no record. The same writers mention other occurrences, which, coming from a different source, might well be doubted. In 1665, Lydia Wardell, a respectable married woman, entered stark naked into the church in Newbury, where she formerly worshipped, and was highly extolled for her submission to the inward light, that had revealed to her the duty of illustrating the spiritual nakedness of her neighbors by this indecent exhibition of her own person.

"The people," says Besse, the quaker, who wrote long after the excitement attending these scenes had subsided, and in another country, "instead of religiously reflecting on their own condition, which she came in that manner to represent to them, fell into a rage, and presently laid hands on her and hurried her away to the court at Ipswich," where she was hastily sentenced to be severely whipped at the next tavern post. She was accordingly stripped and tied with her naked breasts against the splinters of the post, and lashed with more than a score of stripes, "which, though they miserably tore her bruised body, were yet to the great comfort of her husband and friends, who, having unity with her in those sufferings and in the cause of them, stood by to comfort her in so deep a trial." In the same year, Deborah Wilson, a young and respectable married woman, made a similar display in the streets of Salem, for which she was sentenced to be tied to the cart's tail and whipped with her mother and sister, who, it was said, had counseled her. Her young husband, who was not a quaker, followed after, sometimes thrusting his hat between the whip and her back.

In July, 1675, four women and one man were arrested in Boston, for "creating a horrible disturbance, and," as the warrant set forth, "affrighting people in the south church at the time of the public dispensing of the word on the Lord's day, whereby several women are in danger of miscarrying." Margaret Brewster, the leader of the band, appears to have arrived in the town from Barbadoes, on the Lord's day, and, leaving her riding clothes and shoes

at the door of the south church, she rushed into the house with her female companions, creating an alarm in the astonished assembly, that baffles description. She was clothed in sackcloth, with ashes upon her head, and her hair streaming over her shoulders. Her feet were bare, and her face was begrimmed with coal-dust. She announced herself as an illustration of the black pox, which she predicted as an approaching judgment on the people. Upon her examination before the magistrates, she said that God had three years since laid this service upon her in Barbadoes and she had her husband's consent to come and perform it. She and her female companions were sentenced to be stripped from the middle upwards and tied to a cart's tail at the south meeting house, and drawn through the town, receiving twenty lashes on their naked backs.

There are some who dwell with satisfaction on the offences of the quakers, and find in them an extenuation of the law, by which four of the sect had suffered death;[1] but they may with more propriety be considered as the result of the sanguinary proceedings against the quakers, than as the cause of them. It is important to recollect, that, although the quakers had been guilty of acts for which they deserved punishment, and had rendered themselves extremely an-

[1] Even historical writers of acknowledged merit speak of the conduct of some of the quakers in 1665, as though it led to the passage of laws several years previous. If the quakers had been guilty of such indecencies in 1658, they would unquestionably have been referred to in the preambles to the laws subsequently made, and more especially in the declaration of the general court in 1659. Compare Grahame's History of the United States, i. 299.

noying to the civil authority, it was not until they had been driven to madness by cruel persecution, that they were guilty of the insane enormities, which, at this day, would consign them to the mad house instead of the whipping post. Deborah Wilson did not go naked through the streets of Salem, until many of her sex had been stripped to the waist by the command of magistrates, and ignominiously dragged at the cart's tail by the sound of the lash on their naked backs, amid the jeers of the bigoted and the vulgar.[1]

Whatever was the conduct of the quakers, the general proceedings against them need no condemnation at the present day. But the good name and fame of our fathers requires of us to remember, that the more severe laws against this sect were obtained with difficulty. They found few defenders at that day, and were soon universally regarded with regret. "All that can be said of them," says the learned and ingenuous Hubbard, who lived at the time, "amounts to this much; that the inhabitants of the place having purchased the country for themselves, they accounted it an unreasonable injury for any to come presumptuously, without license, or allowance, to live amongst them, and sow the seeds of their dangerous and perverse principles amongst the inhabitants,

[1] These scenes have not escaped the attention of Whittier, the quaker poet of our day: —

"Old Newbury, had her fields a tongue,
And Salem's streets, could tell their story,
Of fainting woman borne along,
Gashed by the whip, accursed and gory!"

tending to the subversion of all that was good, whether sacred or civil; and therefore thought themselves bound to hold out the sharp against any that should attempt, without leave, to thrust themselves amongst them; which renders them that obstinately and wilfully would so do, *felones de se*, like them that will break into a man's dwelling house, whether he will or no." [1] Even Cotton Mather, who was no friend of the quakers, refused to defend the proceedings against them. "A great clamor," he says, "hath been raised against New England for their persecution of the quakers; and if any man will appear in the vindication of it, let him do as he please; for my part I will not. I am verily persuaded these miserable quakers would in a little while (as we have now seen) have come to nothing, if the civil magistrate had not inflicted any civil penalty upon them; nor do I look upon hereticide as an evangelical way for the extinguishing of heresies." "'T is true these quakers did manifest an intolerable contempt of authority, and needlessly pull upon themselves a vengeance, from which the authority would gladly have released them, if they would have accepted of a release; but it is also true, that they were madmen, a sort of lunatics, demoniacs, and enurgumens." [2]

After the execution of Stephenson and Robinson, the general court thought it advisable to vindicate the justice of their proceedings; and for this purpose, several papers appear to have been prepared by

[1] This appears in Hubbard's History of New England as if it were a part of the declaration of the general court.

[2] Magnalia Christi Americana, vii. 4.

different individuals and sent to the court. Two of them were adopted and are spread out upon their records. The first, which was ordered to be printed, briefly recapitulates the proceedings respecting the quakers, and concludes as follows: "The consideration of our gradual proceeding will vindicate us from the clamorous accusation of severity. Our own just and necessary defence calling upon us (other means failing) to offer the point, which these persons have violently and wilfully rushed upon; and thereby are become *felons de se*, which, might it have been prevented, and the sovereign law, *salus populi*, been preserved. Our former proceedings, as well as the sparing of Mary Dyer upon an inconsiderable intercession, will manifestly evince we desired their life absent, rather than their death, present."[1]

The second declaration, which was ordered to be sent to the towns by the secretary in writing, was an elaborate production divided into six heads. First: it asserted, that the doctrines of the quakers were destructive of the fundamental truths of religion and the sacred trinity, the person of Christ, and the holy scriptures as a perfect rule of faith and life; and the commandment of God was plain, that he that professes to speak sin in the name of the Lord and turn people out of the way which the Lord hath commanded to walk in, such an one shall be put to death,

[1] This declaration is contained in Hubbard's History of New England. In answer to it, Bishope wrote the first part of his New England Judged. I am not aware, that the other declaration which was sent to the towns in writing, and of which a brief synopsis is given in the text, has ever been printed.

according to Zacheriah xiii. 3, and Deuteronomy xiii. 6, and xviii. 2. Second: it was the command of God, that christians should obey magistrates, and it was well known that the quakers were far from giving that honor and reverence to magistrates which the Lord required of them, and which good men had given them; but, on the contrary, they showed contempt against them in their very outward gestures and behavior, and some of them at least spared not to belch out railing and cursing speeches. Their case was compared to that of Shimei, whom Solomon commanded not to leave Jerusalem, and whom he put to death because he violated the command. "And, therefore," was the conclusion of this head, "if death may be justly inflicted for breach of confinement, much more for return from banishment, which is these quakers' case." Fourth: there was no man that was possessed of house or land wherein he had just title and propriety of his own, but would account it unreasonably injurious that another, who had no authority therein, should intrude and enter into his house, without his the owner's consent; yea, and whom the owner doth expressly prohibit and forbid the same; and if a person insist upon coming in, the owner might, *se defendendo*, slay him, and his blood would be upon his own head. Had not the keepers and guardian of the commonwealth as much power to take away the lives of such, as, contrary to their prohibition, should invade or intrude into their public possessions or territories. If, then, in such violent and bold attempts the quakers had lost their lives, they might thank themselves as the blameless

cause and authors of their own death. Fifth: who could make question, but that a man that hath children and family both justly may, and in duty ought to preserve them of his charge, as far as he is able, from the dangerous company of persons infected with the plague or pestilence, or other contagious, noisome and mortal diseases; and if such person should offer to intrude into the man's house, amongst his children and family, could any one doubt but the father might withstand such intrusion. Therefore, might not magistrates do the like for their subjects, to keep out moral infection? Sixth: it was the command of the Lord Jesus Christ to his disciples, that when they were persecuted in one city, they should flee into another, and accordingly it was his own practice so to do many a time; and so also of the saints, and his apostles; and reason required men so to do when they had liberty, for by refusing they were guilty of tempting God. If, therefore, what had been done against quakers was persecution, what spirit must they be thought to be actuated or led by, who were, in this, acting so contrary to the commandment and authority of Christ and his saints in the case of persecution, which the quakers supposed to be their case? If their case were the same, their actings were not the same, but quite contrary, so that Christ and his saints were led by one spirit, and those people by another.

The principles and opinions avowed in this declaration were not peculiar to the general court of Massachusetts. Religious intolerance was the mistake of the age. The quakers, in particular, were every

where subjected to severe and unusual punishments. In countries where they were not hanged by express law, they were killed by mobs, and starved in dungeons, gloomy beyond description. By an act of parliament, in 1662, they were made liable to heavy fines for holding meetings, and for a third offence, to transportation to any of his majesty's colonies.[1] In Virginia, they were by law liable to imprisonment till they should abjure the country, and, for a third return, to death. If no execution took place there, it was not owing to the moderation of the church, or the spirit of the legislature; but to historical circumstances, which have not been handed down to us.[2] What need to mention the laws against this sect by other colonies, or the severe penalties attached to nonconformity by British statutes of a later date?

It is a hard measure to visit upon the colonists of Massachusetts Bay the sins of all christendom; and those do not read aright the page of their history who expect extraordinary toleration in the puritans, because they had themselves been driven from their own country. They came to the wilderness of America only for the purpose of enjoying their own religious opinions without hurt or hindrance. They erected a government with this object in view. "It concerneth New England always to remember," was the language of a writer[3] of that day, who spoke by

[1] 13 and 14 of Charles II.; Statutes at Large, v. 82.

[2] Jefferson's Notes on Virginia, Query xvii.

[3] Norton, in his "Heart of New England Rent at the Blasphemies of the present Generation," Cambridge, 1659; a work which was prepared by order of the general court, and for which the author received the thanks of that body and a grant of land.

authority, "that originally they are a plantation religious, not a plantation of trade. The profession of the purity of doctrine, worship, and discipline is written upon her forehead." They asked for no converts; they sought not to enforce their doctrines beyond their own jurisdiction. "Israel shall dwell above;" it was all they asked; and, beyond all question, they had a right, which would be recognized at the present day under similar circumstances, to thrust out of their jurisdiction all who directly interfered with and defeated the very objects, which their government was erected to secure to them and their posterity. In endeavoring to control the opinions of men, and, more than all, in inflicting severe and cruel punishments for that purpose, they fell into the errors and mistakes of the age in which they lived. To judge of their acts by any other rules than those which that age recognized, would be unjust; and to try and condemn them by principles, which are only the growth of the two centuries that have since elapsed, would be both unjust and absurd. Admiting the colonists to be the best, if not the only, judges of the expediency of their measures to promote the ends they had in view; and, looking at those ends by the light of principles, by which alone they ought to be judged of; we shall see less cause to censure our ancestors for the severities they inflicted on the quakers, than we shall to bless God for the light and liberty of an age, in which their offence and their punishment would be equally impossible.

TRIALS FOR WITCHCRAFT

BEFORE THE

SPECIAL COURT OF OYER AND TERMINER,

SALEM, MASSACHUSETTS, 1692.

At the trials for witchcraft in Salem, Massachusetts, 1692, the evidence appears to have been reduced to writing and sworn to by the witnesses in open court, in accordance with the colony laws of 1639 and 1650. Much of this testimony, together with the indictments, orders of the court, death warrants, &c., is still preserved, and has been carefully examined in preparing the following account of those celebrated trials. Immediately subsequent to the trials, a portion of the evidence was collected by Cotton Mather, at the command of governor Phipps, and was published in his Wonders of the Invisible World. Two of the judges certified to the correctness of his reports. A work, which is entitled to more consideration, was written by Robert Calef, a merchant of Boston, entitled More Wonders of the Invisible World. The author was a sturdy opponent of the received notions respecting witchcraft, and exposed the doctrines of Mather on the subject with great clearness and power. It contains the best account of the Salem Witchcraft of any work of that day. The first edition was published in London, 1700. It was republished at Salem, in 1796; and at Boston, in 1828. Hutchinson gives a brief account of these trials in his second volume, and appears to have examined some original documents, which are not preserved. The subject has also received the attention of modern historians, and several popular works have been written upon it, with which the public are familiar.

TRIALS FOR WITCHCRAFT.

That mortals may acquire supernatural power, by entering into a compact with evil spirits, has in all ages and countries been credited by the common people, and even by the learned themselves. The practice, although always held in detestation and abhorrence, was not proceeded against as a crime with any extraordinary zeal, until 1484, when pope Innocent VIII. issued a bull directing the inquisitors to be vigilant in searching out and punishing persons guilty of this crime. The mandate of Innocent was enforced by successive bulls of other popes, and history records the horrors which marked their execution for two centuries and a half. In 1515, five hundred witches were burned at Geneva in the period of three months. In one year, one thousand were executed in the diocese of Como; and it has been calculated,

that not less that one hundred thousand victims must have suffered in Germany from the date of Innocent's bull to the final extinction of the prosecutions.[1]

In England, the practice of witchcraft was early viewed with singular horror, and the course of legislation and judicial procedure against it were peculiarly severe. Individual instances of trial for the offence occur in that country previous to any penal statute against it. In the reign of Henry VIII. it was declared by law to be felony "to practice or cause to be practiced conjuration, enchantment, or sorcery, to get money; or to consume any person in his body, members, or goods; or to provoke any person to unlawful love; or, for the despite of Christ, or lucre of money, to pull down any cross; or to declare where goods stolen lie." [2]

In the reign of queen Elizabeth, a statute was made, which recited that "many fanatical and devilish persons have devised and practiced invocations and conjurations of evil and wicked spirits, and have used and practiced witchcrafts, enchantments, charms and sorceries, to the destruction of the persons and goods of their neighbors, and other subjects of this realm, and for lewd intents and purposes, contrary to the laws of Almighty God, to the peril of their own souls, and to the great infamy and disquietness of this realm;" and declared that every person guilty of such practices, whereby any person should hap-

[1] Encyclopædia Americana, Art. Witch

[2] 33 Henry VIII., c. 8, (1541); Statutes at Large, iii, 347. This statute was repealed by the general words of 1 Edward VI., c. 12 § 4; and 1 Mary, stat. 1, c. 1.

pen to be killed and destroyed, should suffer death without benefit of clergy.[1]

James I., much celebrated for his knowledge, before his arrival in England, not only examined in person a woman accused of witchcraft, but gave a very formal account of the practices and illusions of evil spirits, the compacts of witches, the ceremonies used by them, the manner of detecting them, and the justice of punishing them.[2] During his reign, a law was passed by the parliament of Great Britain, when Bacon was a member of the house of commons, to the effect, that all persons invoking any evil spirits, or consulting, covenanting with, entertaining, employing, feeding, or rewarding any evil spirit; or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment; or killing, or otherwise hurting any person by such infernal arts, should suffer death.[3]

It is estimated that thirty thousand suffered death in England, for suspicion of witchcraft, in one hundred and fifty years.[4] In 1647, between two and three hundred persons were indicted for this offence in Suffolk and Essex, and more than half of them were executed.[5] In 1665, at Bury St. Edmunds, Suffolk, Sir Matthew Hale, a man universally renowned for the strength of his understanding and the purity of his character, after a long and anxious examination,

[1] 5 Elizabeth, c. 16 (1562); Statutes at Large, iv, 230.

[2] Johnson's observations on the tragedy of Macbeth.

[3] 1 James I., c. 12 (1603); Statutes at Large, iv, 599. This statute was repealed by the act of 9 George II., c. 5 (1736).

[4] Howell's State Trials, ii, 1051.

[5] Ib.; Hutchinson's Historical Essays concerning Witchcraft, 50, 179.

sentenced two women, Rose Cullender and Amy Duny, to die for this offence. Their trials were reported with great particularity, and correspond remarkably well with those which subsequently took place in New England. It is related, that the afflicted persons had severe fits during the trial, and, in the midst of them, when they were wholly deprived of sense and understanding, closing their fists in such a manner that the strongest man in court could not force them open, they would suddenly shriek out and open their hands, on the least touch of one of the supposed witches, which accident would not happen by the touch of any other person; and this although they were blinded. A person present objected, that the children might counterfeit this distemper; "wherefore, to avoid this scruple, it was privately desired by the judge, that the Lord Cornwallis, Sir Edmund Bacon, and Mr. Serjeant Keeling, and some other gentlemen then in court, would attend one of the distempered persons in the farther part of the hall, whilst she was in her fits, and then to send for one of the witches, to try what would then happen, which they did accordingly; and Amy Duny was conveyed from the bar and brought to the maid. They put an apron before her eyes, and then one other person touched her hand, which produced the same effect as the touch of the witch did in the court, whereupon the gentlemen returned, openly protesting, that they did believe the whole transaction of this business was a mere imposture;" but their opinion did not save the prisoners.[1] The judicial

[1] Howell's State Trials, vi, 698.

proceedings against witchcraft were checked chiefly by the firmness of Lord Holt, who, in ten trials, from 1694 to 1701, charged the jury in such a manner as to cause them to bring in verdicts of acquittal. But, long after this, the conviction of the witches of Warbois, in the reign of queen Elizabeth, was commemorated in an annual sermon at Huntingdon;[1] and, in 1716, Mrs. Hicks and her daughter, nine years of age, were hanged for selling their souls to the devil, and raising a storm by pulling off stockings and making a lather of soap.[2] In Scotland, the executions for this offence are supposed to have been equally numerous. The last victim executed there perished in 1722; and the seceders in that country published an act of their associate presbytery, at Edinburgh in 1743 — reprinted at Glasgow in 1776 — denouncing the repeal of the penal laws against witchcraft as a national sin.[3]

The colonists of New England did not pretend to be wiser upon this subject than the rest of christendom, and had no doubt of the reality of a practice,

[1] Johnson's observations on the tragedy of Macbeth.

[2] Encyclopædia Americana, Art. Witch.

[3] Arnot's Criminal Trials in Scotland; Grahame's History of the United States, i, 392. — "The law against witches," says Selden in his Table Talk, "does not prove there be any, but it punishes the malice of those people that use such means to take away men's lives. If one should profess that by turning his hat thrice, and crying 'buz,' he could take away a man's life, (though in truth he could do no such thing,) yet this were a just law made by the state, that whosoever should turn his hat thrice and cry 'buz,' with an intention to take away a man's life, shall be put to death." Barrington, in his observations on the statute of 20 Henry VI., thinks "such a law as that suggested by Selden may be declared to be not only ridiculous and futile, but highly unjust." Howell, ii, 1051.

which had received the execration of good men in all ages; which was expressly condemned by the laws of the mother country to the severest of human punishments; and which, in their apprehension, was clearly recognised in the word of God. In accordance with the opinion of their countrymen, they regarded it with a degree of abhorrence and indignation, corresponding with the piety for which they were so remarkably distinguished. But neither in New England, any more than in the old world, was the belief in witchcraft universal; and, as early as 1693, Robert Calef, the unlettered Boston merchant, denied the received opinions on this subject, and exposed a delusion which had so long fastened itself on the public mind, in a style of bold and manly inquiry that commanded attention, and with a vein of sarcasm, that brought upon his head the maledictions of the ministers, and a prosecution by Cotton Mather. Witchcraft, he contended, was manifestly a work of the flesh. To assert that men could enter into a league with evil spirits for the injury of other men, was to make God a party to the compact, or to deny his omnipotence.[1] To assert the first, was to make Him a liar. The last was blasphemy. More than half a century after this, the learned and elegant commentator

[1] The same doctrine was maintained by Reginald Scot, in his Discoverie of Witchcraft, first published in 1584. The copies remaining at the time of James, were burned by his command. It was reprinted in 1651 and 1665. Scot was styled by Glanvil and others, the "Father of the Modern Witch Advocates," the "Gallant of the Old Hags." An elaborate treatise was sent forth in 1677, "The Displaying of Supposed Witchcraft," by John Webster, wherein he defends Scot. D'Israeli.

on the laws of England, asserted in the halls of one of her universities of learning, that, to deny the actual existence of witchcraft and sorcery, was at once flatly to contradict the revealed word of God, in various passages, both of the old and New Testament; and the thing itself was a truth to which every nation in the world had in its turn borne testimony;[1] and he concluded with a writer of that day, that in general there had been such a thing as witchcraft, though one could not give credit to any particular modern instance of it.[2]

From the earliest periods of the history of New England, the Indians were regarded as worshippers of the devil, and their powwows as wizzards. The first suspicion of witchcraft among the English was about the year 1645. At Springfield, on the Connecticut river, several persons were supposed to be under an evil hand, but no one was convicted until 1650, when a poor wretch, Mary Oliver, after a long examination, was brought to a confession of her guilt, but it does not appear that she was executed. About the same time, three persons were executed near Boston, all of whom at their death asserted their innocence. In 1655, Anne Hibbins, the widow of a magistrate and a man of note in Boston, was tried for this offence before the court of assistants. The jury found her guilty, but the magistrates refused to accept the verdict. The case was carried up to the general court, where the popular voice prevailed, and

[1] Blackstone's Commentaries, iv, 60.
[2] Mr. Addison, Spectator, No. 117.

the prisoner was executed. In 1662, at Hartford, Connecticut, a woman named Greensmith confessed that she had been grossly familiar with a dæmon, and she was executed. In 1669, Susanna Martin, of Salisbury, was bound over to the court, upon suspicion of witchcraft, but escaped. She suffered death in 1692. In 1671, Elizabeth Knap, who possessed ventriloquial powers, alarmed the people of Groton, but as her dæmon railed at the minister of the town, and other persons of good character, the people would not believe him. Her fraud and imposture were soon discovered. In 1694, Philip Smith, a judge of the court, a military officer and a representative of the town of Hadley, fancied himself under an evil hand, and suspected an old woman, one of his neighbors, as the cause of his sickness. She was dragged from her house by some young men, who hung her up until she was nearly dead; then rolled her in the snow, and at last buried her in it; but it happened that she survived, and the melancholy man died.

Trials for witchcraft out of New England, were not common. In 1665, Ralph Hall and his wife were tried for the offence in New York, and acquitted. In 1660, in Queen's county, Long Island, Mary Wright was suspected of corresponding with the author of evil. She was arraigned, and it was finally concluded to transport her to the general court of Massachusetts, "where charges of this kind were more common, and the proofs necessary to support them better understood." She was accordingly arraigned there and acquitted of witchcraft, but was

convicted of being a quaker, and banished out of the jurisdiction.[1] In Pennsylvania, when William Penn officiated as judge in his new colony, two women, accused of witchcraft, were presented by the grand jury. Without treating the charge with contempt, which the public mind would not have borne, he charged the jury to bring them in guilty of being suspected of witchcraft, which was not a crime that exposed them to the penalty of the law.[2]

Notwithstanding the frequent instances of supposed witchcraft in Massachusetts, no person had suffered death there on that account, for nearly thirty years after the execution of Anne Hibbins. The sentence of this woman was disapproved of by many influential men, and her fate probably prevented further prosecutions. But in 1685, a very circumstantial account of most of the cases above mentioned was published, and many arguments were brought to convince the country, that they were no delusions or impostures, but the effects of a familiarity between the devil and such as he found fit for his instruments; and, in 1687 or 1688, a more alarming instance occurred than any which had preceded it. Four of the children of John Goodwin, a grave man and a good liver at the north part of Boston, were generally believed to be bewitched. The children were all remarkable for ingenuity of character, had been religiously educated, and were thought to be without guile. The eldest was a girl of thirteen or fourteen years. She

[1] Thomson's History of Long Island, 162.

[2] Life of Cotton Mather, in Sparks's American Biography.

had charged a laundress with taking away some of the family linen. The mother of the laundress was a low Irish woman, of bad character, and gave the girl harsh language; soon after which she fell into fits, which were said to have something diabolical in them. One of her sisters, and two brothers, followed her example, and, it is said, were tormented in the same part of their bodies at the same time, although kept in separate apartments, and ignorant of one another's complaints. One or two things were said to be very remarkable; all their complaints were in the day time, and they slept comfortably all night; they were struck dead at the sight of the Assembly's Catechism, Cotton's Milk for Babes, and some other good books, but could read in Oxford jests, popish and quaker books, and the common prayer, without any difficulty. Sometimes they would be deaf, then dumb, then blind; and sometimes all these disorders together would come upon them. Their tongues would be drawn down their throats, then pulled out upon their chins. Their jaws, necks, shoulders, elbows, and all their joints, would appear to be dislocated; and they would make most piteous outcries of burnings, of being cut with knives, beat, &c., and the marks of wounds were afterwards to be seen. The ministers of Boston and Charlestown kept a day of fasting and prayer at the troubled house; after which, the youngest child made no more complaints. The others continuing to be afflicted, the magistrates interposed, and the old woman was apprehended, but upon examination would neither confess nor deny, and appeared to be disordered in her senses. Upon

the report of physicians that she was *compos mentis*, she was executed, declaring at her death that the children should not be relieved. The eldest was taken into Cotton Mather's family, where, at first, she behaved orderly, but, after some time, suddenly fell into her fits. A printed account of this affair was published, with a preface by Baxter, who says, "the evidence is so convincing, that he must be a very obdurate sadducee who will not believe." The credit it obtained was sufficient, together with other preparatives, to dispose the whole country to be easily imposed upon by the more extensive and more tragical scene, which was presently after acted at Salem and other parts of the county of Essex. Glanvil, not many years before, published his witch stories in England; Perkins and other nonconformists were earlier; but the great authority was that of Sir Matthew Hale, revered in New England, not only for his knowledge in the law, but for his gravity and piety. The trial of the witches in Suffolk was published in 1684. All these books were in New England, and the conformity between the behavior of Goodwin's children and most of the supposed bewitched at Salem, and the behavior of those in England, is so exact, as to leave no room to doubt the stories had been read by the New England persons themselves, or had been told to them by others who had read them.[1]

[1] Hutchinson, from whom this account of Goodwin's children is taken, says they returned to their ordinary behavior; lived to adult age; made a profession of religion, and the affliction they had been under, they publicly declared to be one motive for it. One of them he knew many years after. She had the character of a very sober,

The commencement of what is known as the "Salem Witchcraft," was in the family of Samuel Parris, the minister of Salem village, now Danvers, in February, 1692. There had been a bitter strife between this man and a portion of his people; and the very active part he took in the prosecutions for witchcraft have been justly attributed not less to motives of revenge than to a blind zeal in the performance of what he considered his duty. A daughter of Mr. Parris, nine years of age, his niece, a girl of less than twelve, and two other girls in the neighborhood, began to make the same sort of complaints that Goodwin's children had made, two or three years before. The physicians, having no other way of accounting for their disorder, pronounced them bewitched. An Indian woman, who had been brought into the country from New Spain, and then lived with Mr. Parris, tried some experiments, which she pretended to have been used to, in her own country, in order to find out the witch. This coming to the children's knowledge, they cried out upon the poor Indian, as appearing to them, pinching, pricking, and tormenting them; and they fell into fits. Tituba, the Indian, acknowledged that she had learned how to find out a witch, but denied that she was one herself. Several private fasts were kept at the minister's house, and several, more public, by the whole village, and then a general fast through the colony, to seek to God to rebuke satan. The great notice taken of the children, together with the

virtuous woman, and never made any acknowledgment of fraud in this transaction.

pity and compassion of the persons by whom they were visited, not only tended to confirm them in their conduct, but to draw others into the like. Accordingly, the number of the sufferers soon increased; and, among them, there were two or three women, and some girls old enough for witnesses. These, too, had their fits, and, when in them, cried out, not only against Tituba, but against Sarah Osburn, a melancholy, distracted old woman, and Sarah Good, another old woman who was bed-rid. Tituba having, as it is alleged, been scourged by her master, at length confessed herself a witch, and that the two old women were her confederates. The three were then committed to prison; and Tituba, upon search, was found to have scars upon her back which were called the devil's mark. This took place on the first of March. About three weeks afterwards, two other women, of good character and church members, Corey and Nurse, were complained of and brought to an examination; on which these children fell into fits, and the mother of one of them, the wife of Thomas Putman, joined with the children, and complained of Nurse as tormenting her; she made most terrible shrieks, to the amazement of all the neighborhood. The women, notwithstanding they denied every thing, were sent to prison; and such was the infatuation, that a child of Sarah Good, about four or five years old, was also committed, being charged with biting some of the afflicted, who showed the print of small teeth on their arms. On April 3d, Mr. Parris took for his text, "*Have not I chosen you twelve, and one of you is a devil.*" Sarah Cloyse, supposing it to be occa-

sioned by Nurse's case, who was her sister, went out of meeting; and she was, thereupon, complained of for a witch, examined, and committed. Elizabeth Proctor was charged about the same time; her husband accompanied her to her examination, but it cost him his life. Some of the afflicted cried out upon him also, and they were both committed to prison.

The subject acquired new interest; and, to examine Sarah Cloyse and Elizabeth Proctor, the deputy governor and five other magistrates came to Salem. It was a great day; several ministers were present. Parris officiated; and, by his own record, it is plain that he himself elicited every accusation. His first witness, John, the Indian servant, husband to Tituba, was rebuked by Sarah Cloyse, as a grievous liar. Abigail Williams, the niece of Parris, was also at hand with her tales: the prisoner had been at the witches' sacrament. Struck with horror, Sarah Cloyse asked for water, and sank down "in a dying, fainting fit." "Her spirit," shouted the band of the afflicted, "is gone to prison to her sister Nurse." Against Elizabeth Proctor, the niece of Parris told stories, yet more foolish than false: the prisoner had invited her to sign the devil's book. "Dear child," exclaimed the accused in her agony, "it is not so. There is another judgment, dear child;" and her accusers, turning towards her husband, declared that he, too, was a wizzard. All three were committed.[1]

[1] Bancroft, iii, 86. A copy of the original record of this examination is preserved in Hutchinson, ii, 27, 1st edit.

No wonder that the whole country was in a consternation, when persons of sober lives and unblemished characters were committed to prison upon such evidence. Nobody was safe. The most effectual way to prevent an accusation, was to become an accuser; and, accordingly, the number of the afflicted increased every day, and the number of the accused in proportion. As yet no one had confessed: but at length Deliverance Hobbs owned every thing that was asked of her, and was left unharmed. Then it was, that the monstrous doctrine seems to have been first thought of, that "the gallows was to be set up, not for those who professed themselves witches, but for those who rebuked the delusion," not for the guilty, but for the unbelieving. As might be expected, confessions rose in importance. They were the avenue of safety. Examinations and commitments were of daily occurrence, and the whole community was in a state of terror and alarm, which can more easily be imagined than described. The purest life, the strictest integrity, the most solemn asseverations of innocence, were of no avail. Husband was torn from wife, parents from children, brother from sister; and, in some cases, the unhappy victims saw in their accusers their nearest and dearest friends; in one instance, a wife and a daughter accused the husband and father to save themselves, and, in another, a daughter seven years old testified against her mother.

The manner in which the examinations were conducted was eminently calculated to increase the number of the accused and of the accusers. Mr. Parris

was present at all of them, and was over officious, putting leading questions and artfully entrapping the witnesses into contradictions, by which they became confused, and were eagerly cried out upon as guilty of the offence. The appearance of the persons accused was also carefully noted by the magistrates, and was used in evidence against them at their trials. "As to the method which the Salem justices do take," says a contemporary writer, "it is truly this. A warrant being issued out to apprehend the persons that are charged and complained of by the afflicted children, as they are called; said persons are brought before the justices, the afflicted being present. The justices ask the apprehended why they afflict these poor children; to which the apprehended answer, they do not afflict them. The justices order the apprehended to look upon the said children, which accordingly they do; and at the time of that look (I dare not say *by* that look, as the Salem gentlemen do), the afflicted are cast into a fit. The apprehended are then blinded, and ordered to touch the afflicted; and, at that touch, though not *by* that touch (as above), the afflicted do ordinarily come out of their fits. The afflicted persons then declare and affirm, that the apprehended have afflicted them; upon which the apprehended persons, though of never so good repute, are forthwith committed to prison, on suspicion of witchcraft." [1]

The manner of these examinations has also been

[1] Letter of Rev. Thomas Brattle, dated Oct. 2, 1692; Collections of the Massachusetts Historical Society, v, 61.

described by an eye witness. The wife of Jonathan Carey, of Charlestown, having been committed to prison, he gave an account of her examination.[1] "Having heard, some days, that my wife was accused of witchcraft, being much disturbed at it, by advice we went to Salem village, to see if the afflicted knew her; we arrived there 24th May; it happened to be a day appointed for examination; accordingly, soon after our arrival, Mr. Hathorn and Mr. Curwin, &c., went to the meeting house, which was the place appointed for that work; the minister began with prayer, and having taken care to get a convenient place, I observed that the afflicted were two girls of about ten years old, and some two or three others of about eighteen; one of the girls talked most, and could discern more than the rest. The prisoners were called in one by one, and as they came in were cried out upon. The prisoners were placed about seven or eight feet from the justices, and the accusers between the justices and them; the prisoners were ordered to stand right before the justices, with an officer appointed to hold each hand, lest they should therewith afflict them; and the prisoners' eyes must be constantly on the justices; for if they looked on the afflicted, they would either fall into their fits, or cry out of being hurt by them. After an examination of the prisoners, who it was afflicted these girls, &c., they were put upon saying the Lord's prayer, as a trial of their guilt. After the afflicted seemed to be out of their fits, they would look steadfastly on

[1] Calef, 95, 1st edit.

some one person, and frequently not speak; and then the justices said they were struck dumb, and after a little time would speak again; then the justices said to the accusers, which of you will go and touch the prisoner at the bar? Then the most courageous would adventure, but before they had made three steps would ordinarily fall down as in a fit. The justices ordered that they should be taken up and carried to the prisoner, that she might touch them: and as soon as they were touched by the accused, the justices would say, they are well, before I could discern any alteration; by which I observed that the justices understood the manner of it. Thus far I was only as a spectator; my wife also was there part of the time, but no notice taken of her by the afflicted, except once or twice they came to her and asked her name.

"But I having an opportunity to discourse with Mr. Hale, (with whom I had formerly acquaintance) I took his advice what I had best to do, and desired of him that I might have an opportunity to speak with her that accused my wife; which he promised should be, I acquainting him that I reposed my trust in him. Accordingly he came to me after the examination was over, and told me I had now an opportunity to speak with the said accuser, viz., Abigail Williams, a girl of eleven or twelve years old; but that we could not be in private at Mr. Parris's house, as he had promised me; we went therefore into the ale house, where an Indian man attended us, who it seems was one of the afflicted; to him we gave some cider; he showed several scars, that seemed as if they had

been long there, and showed them as done by witchcraft, and acquainted us that his wife, who also was a slave, was imprisoned for witchcraft. And now, instead of one accuser, they all came in, and began to tumble down like swine; and then three women were called in to attend them. We in the room were all at a stand, to see who they would cry out upon; but in a short time they cried out 'Cary;' and immediately after a warrant was sent from the justices to bring my wife before them, who were in a chamber, near by, waiting for this.

"Being brought before the justices, her chief accusers were two girls. My wife declared to the justices, that she never had any knowledge of them before that day. She was forced to stand with her arms stretched out. I requested that I might hold one of her hands, but it was denied me; then she desired me to wipe the tears from her eyes, and the sweat from her face, which I did; then she desired she might lean herself on me, saying she should faint.

"Justice Hathorn replied, she had strength enough to torment those persons, and she should have strength enough to stand. I speaking something against their cruel proceedings, they commanded me to be silent, or else I should be turned out of the room. The Indian before mentioned was also brought in, to be one of her accusers: being come in, he now (when before the justice) fell down and tumbled about like a hog, but said nothing. The justices asked the girls who afflicted the Indian; they answered, she,

(meaning my wife) and that she now lay upon him ; the justices ordered her to touch him, in order to his cure, but her head must be turned another way, lest, instead of curing, she should make him worse, by her looking on him, her hand being guided to take hold of his ; but the Indian took hold of her hand, and pulled her down on the floor in a barbarous manner ; then his hand was taken off, and her hand put on his, and the cure was quickly wrought. I, being exceedingly troubled at their inhuman dealings, uttered a hasty speech, *that God would take vengeance on them, and desired that God would deliver us out of the hands of unmerciful men.* Then her mittimus was writ. I did with difficulty and charge obtain the liberty of a room, but no beds in it ; if there had been, we could have taken but little rest that night. She was committed to Boston prison ; but I obtained a habeas corpus to remove her to Cambridge prison, which was in our county of Middlesex. Having been there one night, next morning the jailer put irons on her legs (having received such a command ;) the weight of them was about eight pounds ; these irons and her other afflictions soon brought her into convulsion fits, so that I thought she would have died that night. I sent to entreat that the irons might be taken off ; but all entreaties were vain if it would have saved her life, so that in this condition she must continue.

The trials at Salem coming on, I went thither, to see how things were managed ; and finding that the spectre evidence was there received, to-

gether with idle, if not malicious stories, against people's lives, I did easily perceive which way the rest would go; for the same evidence that served for one, would serve for all the rest. I acquainted her with her danger; and that if she was carried to Salem to be tried, I feared she would never return. I did my utmost that she might have her trial in our own county, I with several others petitioning the judge for it, and were put in hopes of it; but I soon saw so much, that I understood thereby it was not intended, which put me upon consulting the means of her escape; which through the goodness of God was effected, and she got to Rhode Island, but soon found herself not safe when there, by reason of the pursuit after her; from thence she went to New York, along with some others that had escaped their cruel hands; where we found his excellency, Benjamin Fletcher, Esq., governor, who was very courteous to us. After this, some of my goods were seized, in a friend's hands, with whom I had left them, and myself imprisoned by the sheriff, and kept in custody half a day, and then dismissed; but to speak of their usage of the prisoners, and the inhumanity shown to them at the time of their execution, no sober christian could bear. They had also trials of cruel mockings; which is the more, considering what a people for religion, I mean the profession of it, we have been; those that suffered being many of them church members, and most of them unspotted in their conversation, till their adversary the devil took up this method of accusing them."

Several of the records of these examinations, taken by Parris and certified by the justices, are still preserved. They exhibit the means taken to entrap those accused, and give evidence of no little acuteness and courage on their part. When Mary Coffin was brought before the justices, the accusing witnesses at first fell into fits, and then asserted that she was the cause of them.

"What do you say," she was asked, "are you guilty or not guilty?"

"I can say before Christ Jesus, I am free."

"You see these accuse you."

"There is a God ——."

"What have you done to these children?"

"I know nothing."

"How can you say that you know nothing, when you see these are tormented and accuse you."

"Would you have me accuse myself?"

"Yes; if you be guilty. How far have you complied with Satan, whereby he takes this advantage over you?"

"Sir, I never complied, but prayed against him all my days. I have no compliance with Satan in this; what would you have me do?"

"Confess if you be guilty."

"I will say it, if it be my last words. I am clear of this sin."

The witnesses were immediately struck dumb and fell into fits. When the prisoner's hands were closed, those of the witnesses were closed likewise, and when she bowed her head, their heads were bowed. At

length, they shrieked out in a frightful manner, and redoubled their accusations of being tormented by the prisoner. "What say you to this?" was demanded of her. "God only knows," was the reply of the poor woman, "it is an evil spirit, but whether it be witchcraft, I do not know;" and she was committed to jail for trial.

Confession being the easiest mode of escape, many were driven to it by their own fears or the urgent entreaties of their friends. Others, when they saw the distress of those afflicted and heard their solemn declarations, that the shapes or spectres of the accused afflicted them, persuaded themselves that they were witches; that evil spirits had in some manner, of which they were ignorant, got possession of their hearts and afflicted others in their shapes; and they confessed themselves guilty. But, in some cases, admissions were extorted by most cruel methods. On one occasion, two young men would not confess any thing, until they were tied together neck and heels, when they accused their own mother. In other instances, those accused were led to confession by severe and artful examinations before the magistrates. Margaret Jacobs, having been thus led into confessing herself a witch, accused Mr. Burroughs, a minister who was subsequently executed, and also her own grandfather; but, struck with horror, she chose to lose her own life, rather than persist in her confession; and begged forgiveness of Burroughs, before his execution, who is said to have freely forgiven her; and recanted all she had said against her grandfather, but

in vain as to his life.[1] Her own life was saved by a disorder in her head, which prevented her trial at the first court; but before the next court, she made a formal recantation of all she had confessed, and delivered it to the judges.

"The humble declaration of Margaret Jacobs unto the honored court now sitting at Salem, showeth, that whereas your poor and humble declarant, being closely confined here in Salem gaol, for the crime of witchcraft, which crime, thanks be to the Lord, I am altogether ignorant of, as will appear at the great day of judgment: may it please the honored court, I was cried out upon by some of the possessed persons, as afflicting them; whereupon I was brought to my examination, which persons at the sight of me fell down, which did very much startle and affright me. The Lord above knows I knew nothing, in the least measure, how or who afflicted them; they told me, without doubt I did, or else they would not fall down at me; they told me, if I would not confess, I should be put down into the dungeon, and would be hanged, but if I would confess, I should have my

[1] A short time after the execution of Mr. Burroughs and her grandfather, the wretched woman wrote an affecting letter to her father, dated "from the dungeon in Salem prison, August 20, '92." "The reason of my confinement here," she says, "is this, I having, through the magistrates' threatenings, and my own vile and wretched heart, confessed several things contrary to my conscience and knowledge, though to the wounding of my own soul, the Lord pardon me for it; but oh! the terrors of a wounded conscience who can bear." "Dear father, let me beg your prayers to the Lord on my behalf, and send us a joyful and happy meeting in heaven. My mother, poor woman, is very crazy, and remembers her kind love to you."

life; the which did so affright me, and, with my own vile wicked heart, to save my life, made me make the confession I did, which confession, may it please the honored court, is altogether false and untrue. The very first night after I had made confession, I was in such horror of conscience, that I could not sleep for fear the devil should carry me away for telling such horrid lies. I was, may it please the honored court, sworn to my confession, as I understand since, but then, at that time, was ignorant of it, not knowing what an oath did mean. The Lord, I hope, in whom I trust, out of the abundance of his mercy, will forgive me my false forswearing myself. What I said, was altogether false against my grandfather, and Mr. Burroughs, which I did to save my life and to have my liberty; but the Lord, charging it to my conscience, made me in so much horror, that I could not contain myself before I had denied my confession, which I did, though I saw nothing but death before me, choosing rather death with a quiet conscience, than to live in such horror, which I could not suffer. Where, upon my denying my confession, I was committed to close prison, where I have enjoyed more felicity in spirit, a thousand times, than I did before in my enlargement. And now, may it please your honors, your declarant, having, in part, given your honors a description of my condition, do leave it to your honors' pious and judicious discretions, to take pity and compassion on my young and tender years, to act and do with me, as the Lord above and your honors shall see good, having no friend, but the Lord, to plead

my cause for me; not being guilty in the least measure of the crime of witchcraft, nor any other sin that deserves death from man; and your poor and humble declarant shall for ever pray, as she is bound in duty, for your honors' happiness in this life and eternal felicity in the world to come. So prays your honors' declarant."

The prisoners had been increasing from the middle of February, until June. The jails of Essex and the neighboring counties were full, and there had been no trials. In May, the new charter and the royal governor, Sir William Phipps, arrived in Boston. The latter, a firm believer in witchcraft, finding the prisons filled with victims, charged with this offence, and, urged on by the seeming emergency of the occasion, issued his special commission, constituting the persons named in it a court to act in and for the counties of Suffolk, Essex, and Middlesex. This court, beyond all question an illegal tribunal, because the governor had no shadow of authority to constitute it, consisted of seven judges, namely; William Stoughton, the lieutenant governor, chief justice, Nathaniel Saltonstal, who subsequently refused to act, and his place was supplied by Jonathan Curwin, John Richards, Bartholomew Gedney, Wait Winthrop, Samuel Sewall, and Peter Sergeant. The date of their commission was the second of June, 1692, and on the same day the court convened at Salem. It was a popular tribunal; there was not a lawyer concerned in its proceedings. Stoughton and Sewall had been educated clergymen; Winthrop and Gedney as physicians; Richards was a merchant; Sergeant was

an influential man in the colony; and Saltonstal, who refused to proceed against those suspected of witchcraft, was an educated man, graduated at Cambridge, in 1659; and afterwards became distinguished as a military commander.

At the opening of the court at Salem, on the second of June, 1692, the commission of the governor was published, and the oath of office was administered to Thomas Newton as attorney general, and to Stephen Sewall as clerk. The chief justice then delivered a charge to the grand jury, in which he told them they were not to mind whether the bodies of the afflicted were really pined and consumed as was expressed in the indictment, but whether the afflicted did not suffer from the accused such afflictions as naturally *tended* to their being pined and consumed. This, said he, is a pining and consuming in the sense of the law.[1]

The general course of proceedings, at these trials, was entirely consistent with the character of the court and the nature of their business. After pleading to the indictment, if the prisoner denied his guilt, the afflicted persons were first brought into

[1] Brattle's letter; Mass. His. Soc. Coll. v, 60. Mr. Washburn, in his Judicial History of Massachusetts, says that Antony Checkley was the attorney general at these trials; but Thomas Newton appears to have acted in that capacity at the first session of the court on June 2. Checkley's commission from governor Phipps, is dated July 7. I find among the papers relating to these trials at Salem, one containing the form of oath administered to Newton as the prosecuting officer, concluding thus: "Salem, June 2, 1692. Thomas Newton took the oath aforesaid in open court, before me. Wm. Stoughton." It is probable, that Checkley acted as prosecuting officer at the subsequent trials.

court and sworn as to who afflicted them. Then the confessors, that is, those who had voluntarily acknowledged themselves witches, were called upon to tell what they knew of the accused; "a thing," said Brattle, who wrote at the time, "which I believe was never heard of in this world, that such as confess themselves to be witches, to have renounced God and Christ, and all that is sacred, should yet be allowed and ordered to swear by the name of the great God!" Proclamation was then made for all who could give any testimony, however foreign to the charge, to come into court, and whatever any one volunteered to tell was admitted as evidence. The next process was to search for "witch marks," the doctrine being that the devil affixed his mark to those in alliance with him, and that this point on the body became callous and dead. This duty was performed by a jury of the same sex, who made a particular return of the appearance of the body, and whether there was any preternatural excrescence. A wart or a mole on the body of a prisoner was often conclusive against him, when the evidence was otherwise doubtful. These examinations in the case of women were made by a jury of matrons, aided by a medical man as foreman. They were very minute, and, in some respects, the most cruel and disgusting part of the proceedings. The unhappy prisoners were not only subjected to the mortification of a gross exposure before the jury of examination, but when any witch mark was found, it was punctured with pins to ascertain whether there was any feeling. There were usually several examinations of the same

individual. In one instance, a woman was examined at 10 o'clock in the morning, and at 4 o'clock in the afternoon the jury certified that they had again examined her, and that her breast, which "in the morning search appeared to us very full, the nibblis fresh and starting, now at this search all lancke and pendant." Of the nine women who were on this jury, but one could write her name; the remainder made their marks.

Evidence was also received respecting the appearance of the accused at the preliminary examinations; and the various signs of witchcraft which then appeared were detailed with much particularity. It was a great sign of witchcraft to make an error in the Lord's prayer, which the accused on those occasions were required to repeat, and if they made a single error, it was brought up at their trial as evidence against them. Thus, one repeated the prayer correctly in every particular, excepting that she said "deliver us from *all* evil," "which was looked upon as if she prayed against what she was now justly under." Upon making another attempt, she said "hollowed be thy name," instead of "hallowed be thy name;" and this "was counted a depraving the words, as signifying to make void, and so a curse, rather than a prayer." The appearance of the accused, and of those supposed to be bewitched, also had an effect against the prisoner. Sometimes the witnesses were struck dumb for a long time; at others, they would fall into terrible fits, and were insensible to the touch of all but the accused, who they declared tormented them. Sometimes the accused

were ordered to look on the afflicted, when the latter would be immediately thrown into fits. It was thought that an invisible and impalpable fluid darted from the eyes of the witch and penetrated the brain of the bewitched. A touch by the witch attracted back the malignant fluid, and the sufferers recovered their senses.[1] Another sign of witchcraft, of great consideration, was an inability of the accused to shed tears.

There was one species of evidence which was of great effect in these prosecutions, and which it was impossible to rebut. Witnesses were allowed to testify to certain acts of the accused, when the latter were not present in the body; that they were tormented by apparitions or spectres of the accused, which pinched them, robbed them of their goods, caused them to languish and pine away, pricked them; and they produced the identical pins which were used for this purpose.[2]

[1] Upham's Lectures on Witchcraft, 41. The similarity of these symptoms to those produced by the mesmerism or animal magnetism of the present day is worthy of observation.

[2] They were filed away with the other evidence in these cases, and may be examined at the present day. The testimony appears to have been reduced to writing. This was sometimes done at the trial, when the witness swore to the correctness of what had been taken down. Sometimes the evidence would seem to have been taken weeks and months before, and the witness would "give it in" at the trial. In other cases, evidence thus taken was used although the witness was not present at the trial. In some instances, the testimony was taken and sworn to before the grand jury, and was then used at the trial. When these "testimonies" were drawn up out of court there was sometimes a certificate by one present as to the appearance of the witnesses, their shrieks, fainting, and passionate exclamations that they were tormented, being all carefully noted at the bottom of the depositions.

Before giving the details of some of these trials, it is proper to remark, that the term "witch" had a somewhat different signification at the period referred to, from what it had in more ancient times. It was applied indiscriminately to either sex, and designated those who had made a deliberate and formal contract with the devil to become his subjects; and, in consequence of this allegiance, he was supposed to exercise his supernatural powers in their favor, and to communicate to them a portion of those powers. It was a wilful transferring of allegiance from God to the devil, by means of a compact usually made by the witch's signing a book presented to her by the other party.

TRIAL OF BRIDGET BISHOP.

At the first session of the special court of oyer and terminer, held in June, 1692, but one trial took place. The victim selected for this occasion was Bridget Bishop, or Oliver, a poor and friendless old woman, who had been charged with witchcraft twenty years before. The indictment against her set forth, that on the nineteenth day of April, and at divers other days and times, as well before as after, she used, practiced, and exercised certain detestable arts, called witchcrafts and sorceries, at and within the township of Salem, in, upon, and against one Mercy Lewis, of Salem village; by which wicked arts, the said Mercy Lewis "was hurt, tortured, afflicted, pined, consumed, wasted, and tormented, against the peace of our sovereign lord and lady, the king and queen, and against the form of the statute

in that case made and provided." There were four other indictments against the prisoner, for the same crime, in afflicting other persons. On her arraignment, she pleaded not guilty.

The fact that the crime had been committed, or that certain persons were bewitched by some one, was considered too notorious to require much proof; and, to fix the crime on the prisoner, the first testimony adduced was that of the persons supposed to be bewitched. Several of them testified, that the shape of the prisoner sometimes very grievously pinched, choaked, bit, and afflicted them; urging them to write their names in a book, which the said spectre called "ours." One of them further testified, that the shape of the prisoner, with another, one day took her from her wheel, and, carrying her to the river side, threatened there to drown her, if she did not sign the book. Others testified, that the said shape did in her threats brag to them, that she had been the death of sundry persons, then by her named. Another testified to the apparition of ghosts to the spectre of the prisoner, crying out, "you murdered us." "About the truth whereof," adds the reporter of this trial, "there was, in the matter of fact, but too much suspicion."

It was then testified, that at the first examination of the prisoner before the magistrates, the bewitched were extremely tortured. If she did but cast her eyes on them, they were presently cast down; and this in such a manner that there could be no collusion in the business. But upon the touch of her hand upon them, when they lay in their swoons, they

would immediately revive; and not upon the touch of any one's else. Moreover, upon some special actions of her body, as the shaking of her head, or the turning of her eyes, they presently and painfully fell into the like postures; and many of the like accidents now fell out, while she was at the bar; one at the same time testifying, that she said she could not be troubled to see the afflicted thus tormented. There was testimony likewise brought in, that a man striking once at the place where a bewitched person said the shape of this Bishop stood, the bewitched cried out, that he had torn her coat, in the place then particularly specified; and the woman's coat was found to be torn in the very place.

Deliverance Hobbs, who had confessed herself to be a witch, testified, that the spectre of the prisoner was then tormenting her on account of her confession, and tempting her to sign the book again, and to deny what she had confessed. She affirmed, that it was the shape of this prisoner, which whipped her with iron rods, to compel her thereunto; and she affirmed, that this Bishop was at a general meeting of the witches, in a field at Salem village, and there partook of a diabolical sacrament in bread and wine then administered.

John Cook testified, that about five or six years ago, one morning about sunrise, he was assaulted in his chamber by the shape of this prisoner, which looked on him, grinned at him, and very much hurt him, with a blow on the side of the head; and, that, on the same day about noon, the same shape walked into the room where he was, and an apple strangely

flew out of his hand, into the lap of his mother, six or eight feet from him.

Samuel Gray testified, that about fourteen years ago, he waked on a night, and saw the room where he lay full of light; and that he then saw plainly a woman between the cradle and the bedside, which looked upon him. He rose and it vanished; though he found the doors all fast; looking out at the entry door, he saw the same woman in the same garb again; and said, "in God's name, what do you come for?" He went to bed, and had the same woman assaulting him. The child in the cradle gave a great screech, and the woman disappeared. It was long before the child could be quieted; and though it was a very likely, thriving child, yet from this time it pined away and after divers months died in a sad condition. He knew not Bishop, nor her name; but when he saw her after this, he knew by her countenance, and apparel, and all circumstances, that it was the apparition of this Bishop, which had thus troubled him.

John Bly and his wife testified, that he bought a sow of Edward Bishop, the husband of the prisoner; and was to pay the price agreed unto another person. The prisoner being angry that she was thus hindered from fingering the money, quarrelled with Bly; soon after which, the sow was taken with strange fits, jumping, leaping, and knocking her head against the fence; she seemed blind and deaf, and would neither eat nor be sucked; whereupon a neighbor said, she believed the creature was overlooked; and sundry other circumstances concurred, which made the deponents believe that Bishop had bewitched it.

Richard Cowan testified, that eight years ago, as he lay awake in his bed, with a light burning in the room, he was annoyed with the apparition of the prisoner, and of two more that were strangers to him, who came and oppressed him, so that he could neither stir himself, nor wake any one else; and that he was the night after molested again in the like manner; the said Bishop taking him by the throat, and pulling him almost out of the bed. His kinsman offered for this cause to lodge with him; and, that night, as they were awake discoursing together, the witness was once more visited by the guests, which had formerly been so troublesome, his kinsman being at the same time struck speechless, and unable to move hand or foot. He had laid his sword by him, which those unhappy spectres did strive much to wrest from him, but he held it too fast for them. He then grew able to call the people of his house; but although they heard him, yet they had not power to speak or stir, until at last, one of the people crying out, "what is the matter?" the spectres all vanished.

Samuel Shattock testified, that in the year 1680, this Bridget Bishop often came to his house upon such frivolous and foolish errands, that they suspected she came indeed with a purpose of mischief. Presently whereupon, his eldest child, which was of as promising health and sense as any child of its age, began to droop exceedingly; and the oftener that Bishop came to the house, the worse grew the child. As the child would be standing at the door, he would be thrown and bruised against the stones, by an invisible hand, and in like sort knock his face against

the sides of the house, and bruise it after a miserable manner. Afterwards, this Bishop would bring him things to dye, whereof he could not imagine any use; and when she paid him a piece of money, the purse and money were unaccountably conveyed out of a locked box, and never seen more. The child was immediately hereupon taken with terrible fits, whereof his friends thought he would have died. Indeed, he did almost nothing but cry and sleep, for several months together; and at length his understanding was utterly taken away. Among other symptoms of an enchantment upon him, one was, that there was a board in the garden whereon he would walk; and all the invitations in the world could never fetch him off. About seventeen or eighteen years after, there came a stranger to the witness's house, who, seeing the child, said, "this poor child is bewitched; and you have a neighbor living not far off who is a witch." He added, "your neighbor has had a falling out with your wife; and she said in her heart, your wife is a proud woman, and she would bring down her pride in this child:" He then remembered, that Bishop had parted from his wife in muttering, and menacing terms, a little before the child was taken ill. The aforesaid stranger would needs carry the bewitched boy with him, to Bishop's house, on pretence of buying a pot of cider. The woman entertained him in a furious manner; and flew also upon the boy, scratching his face till the blood came, and saying: "thou rogue, what, dost thou bring this fellow here to plague me?" Now, the witness had said before he went, that he would fetch blood of her. Ever after,

the boy was followed with grievous fits, which the doctors themselves generally ascribed unto witchcraft; and wherein he would be thrown still into the fire or water, if he were not constantly looked after; and the witness verily believed that Bishop was the cause of it.

John Louder testified, that upon some little controversy with Bishop about her fowls, going well to bed, he awoke in the night by moonlight, and saw clearly the likeness of this woman grievously oppressing him; in which miserable condition she held him unable to help himself, till near day. He told Bishop of this; but she utterly denied it, and threatened him very much. Quickly after this, being at home on a Lord's day, with the doors shut about him, he saw a black pig approach him; which endeavoring to kick, it vanished away. Immediately after, sitting down, he saw a black thing jump in at the window, and come and stand before him. The body was like that of a monkey, the feet like a cock's, but the face much like a man's. He being so extremely affrighted that he could not speak, this monster spoke to him and said: "I am a messenger sent unto you, for I understand that you are in some trouble of mind, and if you will be ruled by me, you shall want for nothing in this world." Whereupon he endeavored to clap his hands upon it; but he could feel no substance, and it jumped out of the window again; but immediately came in by the porch, though the doors were shut, and said, "you had better take my counsel." He then struck at it with a stick, but struck only the

groundsel, and broke the stick. The arm with which he struck was presently disabled; and it vanished away. He presently went out at the back door, and spied this Bishop, in her orchard, going toward her house; but he had not power to set one foot forward unto her. Whereupon, returning into the house, he was immediately accosted by the monster he had seen before, which goblin was going to fly at him; whereat he cried out, "the whole armor of God be between me and you!" So it sprung back, and flew over the apple tree, shaking many apples off the tree in its flying over. At its leap, it flung dirt with its feet against the stomach of the man; whereon he was then struck dumb, and so continued for three days together.

"Upon the producing of this testimony," says Cotton Mather, "Bishop denied that she knew this deponent. Yet their two orchards joined, and they had often had their little quarrels for some years together."

William Stacy testified, that receiving money of this Bishop, for work done by him, he was gone but a matter of three roods from her, and looking for his money found it unaccountably gone from him. Some time after, Bishop asked him whether his father would grind her grist for her? He demanded why? She replied, because folks count me a witch. He answered; "no question but he will grind it for you." Being then gone about six roods from her, with a load in his cart, suddenly the off wheel slumpt, and sunk down into an hole, upon plain ground, so that the witness was forced to get help for the recovering

of the wheel. But stepping back to look for the hole which might give him this disaster, there was none at all to be found. Some time after, he was waked in the night; but it seemed as light as day, and he perfectly saw the shape of this Bishop in the room, troubling of him; but upon her going out, all was dark again. He charged Bishop afterwards with it, and she denied it not; but was very angry. Quickly after, this witness having been threatened by Bishop, as he was in a dark night going to the barn, he was very suddenly taken or lifted from the ground, and thrown against a stone wall; after that, he was again hoisted up, and thrown down a bank, at the end of his house. After this, again passing by this Bishop, his horse, with a small load, striving to draw, all his gears flew to pieces, and the cart fell down, and this deponent going then to lift a bag of corn, of about two bushels, could not budge it with all his might. Many other pranks of this Bishop, the witness was ready to relate. He also testified, that he verily believed the said Bishop was the instrument of his daughter Priscilla's death; "of which suspicion, pregnant reasons were assigned."

John Bly and William Bly testified, that being employed by Bridget Bishop to help take down the cellar wall of the old house wherein she formerly lived, they did in holes of the said old wall find several poppets, made up of rags and hog's bristles, with headless pins in them, the points being outward; "whereof the prisoner could now give no account unto the court that was reasonable or tolerable."

An examination of the prisoner was made by a

jury of women, who reported that they found a preternatural "tet" upon her body, and on making a second examination within three or four hours, there was no such thing to be seen.

The poor woman undertook to explain the circumstances which had been related against her, but she was constantly harrassed; and, becoming confused, she apparently prevaricated somewhat, and all she said made against her. She seems to have been a woman of violent temper, who had lived on ill terms with her neighbors, for many years, and who had long had the reputation of being a witch. Those of her neighbors, who had suffered from her uncomfortable disposition, were nothing loth to attribute all their misfortunes to her; and she thus stood little chance of a fair trial.

She was convicted and sentenced to be hanged, and was remanded to prison to await her doom. "As she was under a guard, passing by the great and spacious meeting house of Salem," — Cotton Mather relates this, — "she gave a look towards the house; and immediately a demon, invisibly entering the meeting house, tore down a part of it; so that though there were no person to be seen there, yet the people at the noise running in found a board, which was strongly fastened with several nails, transported unto another quarter of the house." She was executed on the tenth of June, solemnly protesting her innocence to the last.

After the trial and condemnation of Bridget Bishop, the court adjourned to the thirtieth of June; and the

governor and council thought proper, in the mean time, to take the opinion of several ministers upon the state of things as they then stood. Their return, understood to have been drawn up by Cotton Mather, was as follows.

"1. The afflicted state of our poor neighbors, that are now suffering by molestations from the invisible world, we apprehend so deplorable, that we think their condition calls for the utmost help of all persons in their several capacities.

"2. We cannot but with all thankfulness acknowledge the success, which the merciful God has given to the sedulous and assiduous endeavors of our honorable rulers, to defeat the abominable witchcrafts which have been committed in the country, humbly praying, that the discovery of those mysterious and mischievous wickednesses may be perfected.

"3. We judge that in the prosecution of these and all such witchcrafts, there is need of a very critical and exquisite caution, lest by too much credulity for things received only upon the devil's authority, there be a door opened for a long train of miserable consequences, and Satan get an advantage over us; for we should not be ignorant of his devices.

"4. As, in complaints upon witchcrafts, there may be matters of inquiry which do not amount unto matters of presumption, and there may be matters of presumption which yet may not be matters of conviction, so it is necessary, that all proceedings, thereabout, be managed with an exceeding tenderness toward those that may be complained of, especially if they have been persons formerly of an unblemished reputation.

"5. When the first inquiry is made into the circumstances of such as may lie under the just suspicion of witchcrafts, we could wish that there may be admitted as little as possible of such noise, company, and openness, as may too hastily expose them that are examined, and that there may be nothing used as a test for the trial of the suspected, the lawfulness whereof may be doubted by the people of God; but that the directions given by such judicious writers as Perkins and Bernard may be observed.

"6. Presumptions whereupon persons may be committed, and, much more, convictions whereupon persons may be condemned, as guilty of witchcrafts, ought certainly to be more considerable than barely the accused person's being represented by a spectre unto the afflicted; inasmuch as it is an undoubted and a notorious thing, that a dæmon may, by God's permission, appear, even to ill purposes, in the shape of an innocent, yea and a virtuous man. Nor can we esteem alterations made in the sufferers, by a look or touch of the accused, to be an infallible evidence of guilt, but frequently liable to be abused by the devil's legerdemain.

"7. We know not whether some remarkable affronts given the devils, by our disbelieving those testimonies whose whole force and strength is from them alone, may not put a period unto the progress of the dreadful calamity begun upon us, in the accusation of so many persons, whereof some, we hope, are yet clear from the great transgression laid to their charge.

"8. Nevertheless, we cannot but humbly recom-

mend, unto the government, the speedy and vigorous prosecutions, of such as have rendered themselves obnoxious, according to the directions given in the laws of God, and the wholesome statutes of the English nation, for the detection of witchcrafts."

More attention was paid to the last article of this return than to any of the others. The exquisite caution proposed received but little attention; the prosecutions were carried on with all possible vigor. Accordingly, when the court again met on the thirtieth of June, five women were brought to trial, namely, Sarah Good and Rebecca Nurse, of Salem village, Susannah Martin,[1] of Amesbury, Elizabeth How, of Ipswich, and Sarah Wildes, of Topsfield. They were condemned, and executed on the nineteenth of July. There was no difficulty with any but Rebecca Nurse. She was a member of the church, and of a good character; as to her the jury brought in a verdict of not guilty. The accusers made a great clamor, and the court expressed much dissatisfaction. They said the jury must have disregarded the words the prisoner used, when two female witnesses, Mrs. Hobbs and her daughter, appeared against her, which were; "what! do these persons give in evidence against me now? they used to come among us;" which, in the opinion of the court, referred to a witch meeting.

[1] Of Susannah Martin, Cotton Mather says: "This woman was one of the most impudent, scurrilous, wicked creatures in the world; and she did now, throughout her whole tryal, discover herself to be such an one. Yet when she was asked what she had to say of herself, her chief plea was, that she had led a most vertuous and holy life." Wonders of the Invisible World, 116. Calef, 132, 1st edit.

The jury again retired, "but could not tell how to take her words against her," (the foreman afterwards said this,) "till she had a further opportunity to put her sense upon them, if she would take it;" and the words were again mentioned in court, but the accused making no explanation, the jury no longer hesitated to convict. The poor woman, being informed of the use which had been made of her words, gave in a declaration to the court, that when she said Hobbs and her daughter were of her company, she meant no more than that they were prisoners as well as herself, and ought not to be permitted to testify against their fellow prisoners, and that, being hard of hearing and full of grief, she did not know what the foreman of the jury said, and therefore had no opportunity to explain her meaning. The governor, it is said, saw cause to grant a reprieve, but it met with violent opposition, and was recalled.[1] On the next communion day, she was taken in chains to the meeting house, to be formally excommunicated by Mr. Noyes, her minister, and was hanged with the rest on the nineteenth of July. "But her life and conversation had been such, that the remembrance thereof, in a short time after, wiped off all the reproach occasioned by the civil or ecclesiastical sentence against her."

At the trial of Sarah Good, it is said that one of the afflicted persons fell into a fit, and, after recovery, cried out "that the prisoner had stabbed her and

[1] There is said to have been an organized committee in Salem, whose business it was to carry on these prosecutions, and the reprieve in Nurse's case was defeated by them.

broke her knife in doing it;" and a piece of the knife was found upon the afflicted person; but a young man declared, that, the day before, he broke that very knife and threw away the piece, this afflicted person being then present. The court took so much notice of this as to bid her tell no more lies, but went on to use her as a witness against other prisoners.[1] When Sarah Good came to be executed, Noyes, her minister, urged her to confess, and told her she was a witch, and she knew she was a witch; to which she replied; "you are a liar—I am no more a witch than you are a wizzard, and if you take away my life, God will give you blood to drink." For many years afterwards, the people of Salem had a tradition, that the curse of this poor woman was verified, Mr. Noyes having been choked to death with blood.

At the next adjournment of the court, on the fifth of August, six persons were brought to trial and were condemned to be executed on the nineteenth of August, namely, John Proctor, Elizabeth, his wife, and John Willard, of Salem village, George Jacobs, of Salem, Martha Carrier, of Andover, and George Burroughs, of Wells, in the province of Maine.

A short time before their trial, Proctor addressed a letter from the prison in Salem to the ministers of Boston, in which he implored their intercession with the governor in behalf of himself and the others who were soon to be tried for their lives. "The innocency of our cause," he said, "with the enmity of

[1] Calef. A similar fraud in a trial before Sir Matthew Hale is referred to *ante*, page 70.

our accusers, and our judges, and jury, whom nothing but our innocent blood will serve their turn, having condemned us already before our trials, being so much incensed and enraged against us by the devil, makes us bold to beg and implore your favorable assistance of this our humble petition to his excellency; that if it be possible our innocent blood may be spared, which undoubtedly otherwise will be shed, if the Lord doth not mercifully step in. The magistrates, ministers, juries, and all the people in general, being so much enraged and incensed against us by the delusion of the devil, which we can term no other, by reason we know in our own consciences, we are all innocent persons. Here are five persons who have lately confessed themselves to be witches, and do accuse some of us of being along with them at a sacrament, since we were committed into close prison, which we know to be lies. Two of the five are Carrier's sons; young men who would not confess any thing till they tied them neck and heels, till the blood was ready to come out of their noses, and it is credibly believed, and reported this was the occasion of making them confess that which they never did, by reason they said one had been a witch a month, and another five weeks, and that their mother had made them so, who has been confined here this nine weeks. My son, William Proctor, when he was examined, because he would not confess that he was guilty, when he was innocent, they tied him neck and heels till the blood gushed out at his nose, and would have kept him so twenty-four hours, if one more merciful than the rest had not taken pity on

him, and caused him to be unbound. These actions are very like the popish cruelties. They have already undone us in our estates,[1] and that will not serve their turns, without our innocent blood. If it cannot be granted that we can have our trials at Boston, we humbly beg that you would endeavor to have these magistrates changed, and others in their rooms; begging also and beseeching you would be pleased to be here, if not all, some of you at our trials, hoping thereby you may be the means of saving the shedding our innocent blood, desiring your prayers to the Lord in our behalf, we rest your poor afflicted servants."

When Proctor came to die, he pleaded hard for a little respite of time, saying that he was not fit to die; but it was refused. He had requested Noyes to pray with and for him, but that was refused because he would not confess himself a witch. His wife being pregnant was reprieved.

John Willard, who was executed with the rest, at this time, was formerly employed as an officer in arresting those accused of witchcraft; but becoming

[1] While Proctor and his wife were in prison, the sheriff came to his house and seized all the goods, provisions and cattle that he could come at; sold some of the cattle at half price; killed others, and put them up for the West Indies; threw out the beer out of a barrel, and carried away the barrel; emptied a pot of broth, and took away the pot, and left nothing in the house for the support of the children. When Jacobs was condemned, the officers seized all he had, and his wife had her wedding ring taken from her, but with great difficulty obtained it again. She was forced to buy provisions of the sheriff, such as he had taken, towards her own support, which not being sufficient, the neighbors, of charity, relieved her. Calef, 104, 105.

dissatisfied, he declined the service, and was himself immediately after accused of being a witch. He escaped as far as Nashua, about forty miles from Salem, but was taken and paid the forfeit of his disobedience and want of faith with his life.

At the original examination of Martha Carrier, two of her children had been tortured into a confession against her; but Cotton Mather says this evidence was not produced against the prisoner, at the trial, inasmuch as there was other evidence enough to proceed upon. At the end of his report of her trial, this unhappy man makes the following "*memorandum.* This rampant hag, Martha Carryer, was the person, of whom the confessions of the witches and of her own children, among the rest, agreed that the devil had promised her, she should be queen of hell."[1] The confession of her daughter, a child of seven years old, is still preserved.

TRIAL OF GEORGE BURROUGHS.

George Burroughs was a man of ability and education, who was graduated at Cambridge, in 1670, and had formerly been a minister in Salem village. His trial and condemnation is one of the darkest transactions, which the annals of crime in this country present. There were at the time vague hints, which became at length positive assertions, of difficulties between him and Parris, which render his fate a terrible commentary on the power thrown into the hands of a few designing men by the excited state

[1] Wonders of the Invisible World, 138; Calef, 139, 1st edit.

of public feeling. Moreover, he boldly denied that there was or could be such a thing as witchcraft in the current sense of the term. He was among the first who were accused, and, after lying in jail several months, he was brought to trial, as before stated, on the fifth of August. The indictment set forth, that the prisoner on the ninth day of May and divers other days, as well before as after, "certain detestable arts, called witchcraft and sorceries, wickedly and feloniously hath used, practised, and exercised, at and within the township of Salem, in the county of Essex aforesaid, in, upon, and against one Anne Putnam, singlewoman, by which said wicked arts, the said Anne Putnam, the ninth day of May, and divers other days and times, as well before as after, was and is tortured, afflicted, pined, consumed, wasted and tormented, against the peace of our sovereign lord and lady, the king and queen, and against the form of the statute in that case made and provided."

There were three other indictments against the prisoner, to all of which, on his arraignment, he pleaded not guilty. The evidence against him was of a very loose and general nature, consisting in a great measure of things said and done by his shape or apparition, when he was not present as to the body. Attempts were made in this way to prove that the prisoner had murdered two wives and other persons. Testimony was also received respecting great feats of strength performed by the prisoner. But what made against him very much was the appearance of the witnesses, when they gave in their testimony. They fell into terrible fits, and were

struck dumb. "Who hinders these witnesses," said the chief justice, "from giving their testimony?" "I suppose the devil," answered Burroughs. "How comes the devil," retorted Stoughton, "so loath to have any testimony borne against you?" and the question was decisive against him. The following is the testimony of most of the witnesses at this trial, condensed from original documents.

Anne Putnam. On the ninth of May, 1692, in the evening, I saw the apparition of George Burroughs, who grievously tortured me, and urged me to write in his book, which I refused. He then told me that his two first wives would appear to me presently and tell me a great many lies, but I should not believe them. Immediately there appeared to me the forms of two women in winding sheets and napkins about their heads, at which I was greatly affrighted. They turned their faces towards Mr. Burroughs and looked very red and angry at him, telling him that he had been a cruel man to them, and that their blood cried for vengeance against him. They also told him they should be clothed with white robes in heaven when he should be cast into hell. Immediately he vanished away, and, as soon as he was gone, the two women turned their faces towards me, looking as pale as a white wall. They said they were Mr. Burroughs's first wives, and that he had murdered them. One of them said she was his first wife, and he stabbed her under the left arm and put a piece of sealing wax on the wound; and she pulled aside the winding sheet and showed me the place, and also told me that she was in the house where Mr. Parris

now lives when it was done. The other told me, that Mr. Burroughs and his present wife killed her in the vessel as she was coming to see her friends, because they would have one another; and they both charged me that I should tell these things to the magistrates before Mr. Burroughs's face, and if he did not own them, they did not know but they should appear there this morning. Mrs. Lawson and her daughter also appeared to me and told me, that Mr. Burroughs murdered them. This morning there also appeared to me another woman in a winding sheet, and told me, that she was goodman Fuller's first wife, and that Mr. Burroughs killed her because of some difference between her husband and himself. The prisoner, on the ninth of May, also, at his first examination, most grievously tormented and afflicted Mary Walcott, Mercy Lewis, Elizabeth Hubbard, and Abigail Williams, by pinching, pricking, and choking them.

Elizabeth Hubbard. One night there appeared to me a little black-bearded man in dark apparel, who told me his name was Burroughs. He took a book out of his pocket, and bade me set my hand to it. I refused. The lines in the book were as red as blood. He then pinched me and went away. He has often appeared to me since and threatened to kill me if I would not sign the book. He tortured me very much by biting, pinching, and squeezing my body, and running pins into me. At his first examination on May ninth, he did most grievously afflict and torment the bodies of Mary Walcott, Mercy Lewis, Anne Putnam, and Abigail Williams. If he did but look upon them, he

would strike them down or almost choke them to death. I believe in my heart, that Mr. George Burroughs is a dreadful wizzard.

Sarah Viber. On the ninth of May last, as I was going to Salem village, I saw the apparition of a little man, like a minister, with a black coat on, and he pinched me by the arm and bade me go with him, but I would not, and when I came to the village, I saw Mr. George Burroughs, whom I never saw before. Then I knew, that it was his apparition which I had seen in the morning. He tortured me several times during the time of his examination. I also saw him or his appearance torment and afflict Mary Walcott, Mercy Lewis, Elizabeth Hubbard, Anne Putnam and Abigail Williams, by pinching, twisting, and almost choking them to death. I believe in my heart, that he is a dreadful wizzard.

Mercy Lewis. On the seventh of May last, in the evening, I saw Mr. George Burroughs, who urged me to write in his book. He told me, that the devil was his servant, and mentioned several whom he had bewitched. He tortured me dreadfully and threatened to kill me, for he said I should not witness against him. He also told me I should not see his two wives if he could help it, because I should not witness against him. On the ninth of May, Mr. Burroughs carried me up into an exceeding high mountain and showed me all the kingdoms of the earth, and told me that he would give them all to me, if I would write in his book, and if I would not, he would throw me down and break my neck ; but I told him they were not his to give, and I would not write if he threw me down on a hundred pitchforks.

Benjamin Hutchinson. On the twenty-first of April, Abigail Williams told me there was a little black minister who lived at Casco Bay, who told her he had killed two wives for himself, and one for Mr. Lawson, and that he could hold out the heaviest gun in Casco Bay in one hand, although any other man can scarcely hold one out in both hands. I asked her where this little man stood. She said just where the cart wheel went along. I had a three grained iron fork in my hand and I threw it where she said he stood, and she presently fell into a fit, and when it was over, said, "you have torn his coat, for I heard it tare." "Whereabouts?" said I. "On one side" said she. Then we came to the house of lieutenant Ingersol, and I went into the great room. Abigail came in and said, "there he stands." I said "where, where?" and presently drew my rapier, but he was immediately gone, as she said. Then she said, "there is a gray cat." I struck with my rapier and she fell into a fit. When it was over, she said, "you have killed her."

Simon Willard. Being at the house of Mr. Lawrence, at Falmouth, in Casco Bay, in September, 1689, he was commending the strength of Mr. George Burroughs, saying that none of us could do what he could; "for," said he, "Mr. Burroughs can hold out this gun with one hand." Mr. Burroughs being present, explained where he took hold of the gun to hold it out, but he did not hold it out then. The gun was near a seven feet barrel and very heavy. I could not hold it out with both hands long enough to take sight. In 1689, being in captain Sargeant's

garrison, Mr. Burroughs said he had carried a barrel of molasses or cider from a boat to the shore.

Samuel Webber. About eight years ago I lived at Casco Bay, and George Burroughs was then minister there. Having heard much of his great strength, I conversed with him about it, and he then told me, that he had put his fingers into the bung of a barrel of molasses, lifted it up, and carried it round him, and set it down again.

Susannah Harris testified, that she formerly lived at the house of Burroughs in Falmouth, and often when he was absent and she had conversed with his wife, he knew what was said and told her on his return.

There appears to have been some further testimony of which there is no record. The prisoner said but little at his trial. He made some attempt to explain away the testimony against him, but became confused, and made contradictory statements. He also handed in a paper to the jury, in which he utterly denied that there was any truth in the received notions of witchcraft. The jury returned a verdict of guilty, and he was sentenced to die.

On the nineteenth of August, he was carried in a cart through the streets of Salem with the others, who were to die. Upon the ladder he made a calm and powerful address to the multitude, in which he asserted his innocence "with such solemn and serious expressions as were to the admiration of all present." He then made a prayer, concluding with the Lord's prayer, which he repeated in a clear, sonorous tone, with entire exactness, and with a fervency

wee whoes names are under written
haueing reiuied an order from ye
sreife forto search ye bodyes of
George Burroughs and George
Jacobs. wee find nothing upon ye
body of ye aboue sayd burroughs
but wt is naturall. but upon ye
body of George Jacobs wee find 3
tells. wch according to ye best of
our Judgements wee think is not
naturall for wee run a pinn thr
ough 2 of ym and he was
not sinceible of it: one of them
being within his mouth upon ye
Inside of his right cheake
and 2nd upon his right shoulder
blade and a 3rd upon his right
hipp

Ed: Weld sworne
Tom Flint Jurat
Will Gill sworne
Tom West sworne
Zeb Hill Jurat
Sam Morgan sworn
John Bare Jurat

FAC SIMILE

Of the return of a Jury, appointed to examine the bodies of George Jacobs & George Burroughs, at the trials for Witchcraft, Salem, Massachusetts, 1692. *See page 94.*

that astonished. Many were affected to tears, and it seemed as if the spectators would hinder the execution. But the accusers cried, that the devil assisted him; the execution proceeded, and the husband, the father, and the minister of God, was violently sent to his long home. Cotton Mather, on horseback in the crowd, addressed the people, declaring that Burroughs was no ordained minister, insisted on his guilt, and asserted that the devil had often been transformed into an angel of light. When the body was cut down, it was dragged by the halter to a hole about a foot deep. It was stripped of its garments, and some old clothing of one executed being put upon the body, it was thrown in with two others, a part of it being left uncovered.[1]

After the death of Burroughs, it was related, that the night before his execution there was a great witch meeting, at which the sacrament was administered; that Burroughs was present and took leave of his companions, bidding them hold fast to the faith and make no confessions.

On the ninth of September, Martha Cory, of Salem village, Mary Easty of Topsfield, Alice Parker and Ann Pudeater, of Salem, Dorcas Hoar, of Beverly, and Mary Bradbury, of Salisbury, were tried, and received sentence of death; and, on the seventeenth of the same month, Margaret Scott, of Rowley, Willmet Redd, of Marblehead, Samuel Wardwell, Mary Parker, Mary Lacy, and Ann Foster, of Andover, Abigail Falkner, of Andover, who pleaded pregnancy, Rebecca Eames, of Boxford, and Abigail

[1] Calef, 104, 1st edit.

Hobbs, of Topsfield, received the same sentence. Of the above, eight were executed on the twenty-second of September, namely, Samuel Wardwell, Martha Cory, Mary Easty, Alice Parker, Ann Pudeater, Margaret Scott, and Willmet Redd.

Wardwell had confessed and was safe; but he retracted his confession, and was condemned, not for witchcraft, but for denying witchcraft.[1] At his execution, while addressing the people, protesting his innocence, the executioner was smoking tobacco, and the smoke coming into his face interrupted his discourse: "see how the devil wraps him in smoke," was the shout of the accusing witnesses.

Martha Cory, an ancient and venerable woman, protesting her innocence to the last, "concluded her life with an eminent prayer on the ladder." Her husband, Giles Cory, an octogenarian, seeing that no one escaped, knowing that a trial was but the form of convicting him of a felony, by which his estate would be forfeited, refused to plead, and was condemned to be pressed to death; the only instance in which the horrible death by the common law judgment, for standing mute on arraignment, has been inflicted in America.[2] As the aged frame of the dying man yielded to the dreadful pressure, his tongue

[1] The original record of his confession, as taken September 1, 1692, before John Higginson, is still preserved. Under it, in a different hand, is written: "Samuel Wardwell owned to the grand inquest that the above written confession was taken from his mouth; that he had said it. But he said he belied himself. He also said it was all one; he knew he should die for it, whether he owned it or not. Sept. 13, 1692."

[2] Washburn's Judicial History of Massachusetts, 142.

protruded from his mouth, and the sheriff thrust it back again with the point of his cane.[1]

Mary Easty, who was hanged with the others on the twenty-second of September, was a woman of great strength of mind and sweetness of disposition. Before her trial she united with her sister, Sarah Cloyse, in a petition to the court, in which they say: "whereas we two sisters stand now before the honored court, charged with the suspicion of witchcraft, our humble request is, first; that seeing we are neither able to plead our own cause, nor is counsel allowed to those in our condition, that you, who are our judges, would please to be of counsel to us, to direct us wherein we may stand in need. Secondly; that whereas we are not conscious to ourselves of any guilt in the least degree of that crime whereof we are now accused (in the presence of the living God we speak it, before whose awful tribunal we know we must ere long appear) nor of any other scandalous evil or miscarriage inconsistent with christianity, those who have had the longest and best knowledge of us, being persons of good report, may be suffered to testify upon oath what they know concerning each of us, namely, Mr. Capen, the pastor, and those of the town and church of Topsfield, who are ready to say

[1] Calef, 106. Sewall, one of the judges, in his private journal, under the date of September 19, 1692, narrates the fact, that about noon, Giles Cory was pressed to death for standing mute, and on the following day is this entry: "Now I hear from Salem, that about eighteen years ago, he (Cory) was suspected to have stamped and pressed a man to death, but was cleared. It was not remembered, until Anne Putnam was told of it by said Cory's spectre, the Sabbath day night before the execution." Washburn, 148.

something which we hope may be looked upon as very considerable in this matter; with the seven children of one of us, namely, Mary Easty, and that it may be produced of like nature in reference to the wife of Peter Cloyse, her sister. Thirdly; that the testimony of witches, or such as are afflicted, as is supposed, by witches, may not be improved to condemn us, without other legal evidence concurring. We hope the honored court and jury will be so tender of the lives of such as we are, who have for many years lived under the unblemished reputation of christianity, as not to condemn them without a fair and equal hearing, of what may be said for us as well as against us. And your poor supplicants shall be bound always to pray."

After the condemnation of Mary Easty, she sent another petition to the court, which, as an exhibition of the noblest fortitude, united with sweetness of temper, dignity, and resignation, as well as of calmness towards those who had selected so many victims from her family, will be read with unqualified admiration by the modern reader. When it is recollected, that confession was the sure if not the only means of obtaining the favor of the court, this petition must be regarded as a most affecting appeal by an humble and feeble woman, about to lay down her life in the cause of truth; and who, a wife and a mother, in circumstances of terrible trial, uttered no word of complaint, but met her fate with a calmness and resignation, which excites the wonder of all who read her story.

"The humble petition of Mary Easty unto his ex-

cellency Sir William Phipps, and to the honorable judge and bench now sitting in judicature in Salem, and the reverend ministers, humbly sheweth: That whereas your poor and humble petitioner, being condemned to die, doth humbly beg of you to take it into your judicious and pious consideration, that your poor and humble petitioner, knowing my own innocency (blessed be the Lord for it) and seeing plainly the wiles and subtilty of my accusers, by myself, cannot but judge charitably of others, that are going the same way with myself, if the Lord step not mightily in. I was confined a whole month on the same account that I am now condemned for, and then cleared by the afflicted persons, as some of your honors know; and in two day's time I was cried out upon by them, and have been confined, and now am condemned to die. The Lord above knows my innocency then, and likewise doth now, as at the great day will be known to men and angels. I petition to your honors not for my own life, for I know I must die, and my appointed time is set; but the Lord he knows it is, if it be possible, that no more innocent blood may be shed, which undoubtedly cannot be avoided in the way and course you go on. I question not but your honors do to the utmost of your powers, in the discovery and detecting of witchcraft and witches, and would not be guilty of innocent blood for the world; but, by my own innocency, I know, you are in the wrong way. The Lord in his infinite mercy direct you in this great work, if it be his blessed will, that no more innocent blood be shed. I would humbly beg of you, that your honors would be pleased to

examine these afflicted persons strictly, and keep them apart some time, and likewise to try some of these confessing witches; I being confident there are several of them have belied themselves and others, as will appear, if not in this world, I am sure in the world to come, whither I am going; and I question not, but yourselves will see an alteration in these things. They say myself and others have made a league with the devil; we cannot confess. I know and the Lord he knows, as will shortly appear, they belie me, and so I question not but they do others; the Lord alone, who is the searcher of all hearts, knows, as I shall answer it at the tribunal seat, that I know not the least thing of witchcraft, therefore I cannot, I durst not belie my own soul. I beg your honors not to deny this my humble petition, from a poor, innocent person, and I question not but the Lord will give a blessing to your endeavors."[1]

The parting scene between this excellent woman and her husband, children, and friends, was "as serious, religious, distinct and affectionate as could well

[1] With the exception of a few slight verbal corrections, this petition is an exact copy from the original, which is still preserved. There is every reason to believe from the appearance of the handwriting, the paper, and the corrections, that it was drawn up by the petitioner herself. She was about sixty years old, and the mother of seven children. There is a petition in the state archives, dated September 8, 1719, from her husband to a committee of the general court, in which he states that he is eighty-two years old; that he believed his wife was entirely innocent of the offence for which she suffered; and that she was five months in prison, during which time he maintained her and visited her constantly twice a week to provide for her necessities; for all which he claims twenty pounds as compensation.

be expressed, drawing tears from the eyes of almost all present." She was hanged with the others. "There hang eight fire brands of hell," said Noyes, the minister of Salem, pointing to the bodies hanging on the gallows.

The court of oyer and terminer never sat again. It was impossible for these atrocities to be longer endured. The common mind of Massachusetts, more wise than those in authority and influence, became concentrated against such monstrous proceedings, and jurors refused to convict while the judicial power was yet unsatisfied with victims. Already twenty persons had suffered death; more than fifty had been tortured or terrified into confession; the jails were full, and hundreds were under suspicion. Where was this to end? Moreover, the frauds and imposture attending these scenes began to be apparent. It was observed, that no one of the condemned, confessing witchcraft, had been hanged; no one who confessed and retracted a confession escaped either hanging, or imprisonment for trial. Favoritism had been shown in refusing to listen to accusations, which were directed against friends or partisans. Corrupt means had been used to tempt people to become accusers, and accusations began to be made against the most respectable inhabitants of the province and some ministers.[1] It was also

[1] John Bradstreet was accused of bewitching a dog, but made his escape out of the province. The dog was put to death as a witch. Calef, 109. Even the wife of governor Phipps came under suspicion, probably from the circumstance that when a certain young woman was committed to prison in Boston on suspicion of the offence, the wife of the governor drew up an order for her release, and signed her husband's name to it without his knowledge.

observed, that the trials were not fairly conducted. They were but a form to condemn the accused. No one brought to the bar escaped, and all who were cried out upon expected death. The wife of the wealthiest person in Salem, a merchant, and a man of the highest respectability, being accused, the warrant was read to her in the evening in her bed chamber, and guards were placed round the house. In the morning, she attended the devotions of her family, gave instructions for the education of her children, kissed them, commended them to God, bade them farewell, and committed herself to the sheriff, declaring her readiness to die.[1] Such a state of things could not continue long, in any age, whilst the essential elements of human nature remain the same. No wonder the miserable creatures who endured these sufferings felt that New England was indeed deserted by God.

Meanwhile, the court had adjourned to the first Tuesday of November. "Between this and then," wrote Brattle, "will be the great assembly, and this matter will be a peculiar subject of agitation." "Our hopes," he adds, "are here." The representatives of the people must stay the evil or "New England is undone and undone." Nor were these hopes disappointed. The general court assembled about a fortnight after the last hanging of eight at Salem.

The jailer, suspecting nothing wrong, released the prisoner; but he lost his place for his mistake.

[1] Her husband, Philip English, at first concealed himself, but surrendered himself up; and subsequently they both escaped to New York. Upham's Lectures, 28.

Its measures were not in direct opposition to the current of popular delusion; but were calculated to give time for reflection, and to afford opportunity for the change which was evidently taking place in public opinion. The statute of James I. against witchcraft, was adopted as the law of the province;[1] the special court of oyer and terminer, which had just adjourned for a short respite from its labors, was abrogated; and, in its stead, a new tribunal, which was not to assemble until the next January, was established by public law.

When the court assembled, the grand jury dismissed more than half of the presentments made to them, but found bills against twenty-six. Of these, three only were found guilty, although the evidence was equally strong as in the previous cases. One of them was the wife of Wardwell, who had been previously convicted and executed on her testimony; her confession was now used against herself. They were all reprieved. The court next sat at Charlestown, in the same month, where several indictments were found, and the trial of Sarah Daston, a woman of eighty years old, took place. "If ever there were a witch in the world," it was said, "she was one," having been so accounted for thirty years; and an immense concourse of people assembled to witness the proceedings. But she was acquitted. While the court was sitting, word was brought, that a reprieve had been sent to Salem for seven of the condemned; upon which Stoughton, the chief justice, exclaimed,

[1] Rejected by the king, William III., when laid before him for his approbation.

"we were in a way to have cleared the land of these; who it is obstructs the course of justice, I know not; the Lord be merciful to the country;" and thereupon he retired from the bench, and came no more to the court.

The causes of this change in public opinion are variously stated. Some attribute it to the fact, that the wife of the minister of Beverly being accused, he immediately changed his mind in regard to the propriety of the prosecutions, and thenceforward opposed as zealously as he had previously encouraged them. Others relate that the wife of a gentleman in Boston being accused, he brought an action for slander, claiming a thousand pounds damages;[1] and that this turned back the current of accusations. But such causes were inadequate to the effect. These incidental facts were rather the result of the change that was taking place, than the cause of it. The force of public sentiment, which had hanged one minister, could scarcely have been resisted by the efforts of another. An action at law, sounding in damages, would hardly stop the mouths of accusing witnesses, who professed to have given themselves to the pow-

[1] A similar action was brought in the time of lord Hobart (1646). The report is short and to the purpose: "*Marshall* v. *Steward.* Marshall brought an action of the case against Steward, reciting the statute of 1 Jac. of invocation of foul spirits, (which was needless,) for speaking these words unto him, 'the devil appears unto hee every night in the likeness of a black man, riding upon a black horse, and thou conferrest with him, and whatever thou dost ask him he doth give it thee, and that is the reason thou hast so much money.' And after a verdict finding the words, the court gave judgment for the plaintiff." Hobart's Reports, by Cummings, 279.

ers of darkness. The cause of the change is rather to be sought in the principles of our nature, and is to be found partly in that instinctive effort for self-preservation, which, in communities of individuals, unites the weak against oppression, and gives courage to the feeble and unprotected. A belief in witchcraft was one of the superstitions of the age; and the change of public sentiment, which now took place, was not so much a loss of faith in its reality, as a conviction of the uselessness and danger of punishing it by human laws. Of the causes of the transient delusion, which rose so high, and terminated so fatally, among the sober and godly people of New England, no definite explanation can, at this distance of time, be given; but their descendants may be allowed, in the same spirit of trust in providence which distinguished them, to cherish the belief, that it was permitted for purposes of wisdom and benevolence, which could not otherwise have been accomplished.[1] When its work was done it properly ceased. Such moral desolations often pass over the face of society; the thunder storm does its work; the atmosphere becomes clear; the sun shines forth and reveals to all the work of death.

The change in the public mind was complete and universal. Bitter was the lamentation of the whole community for the sad consequences of their rashness and delusion; contrite the repentance of all who had been actors in the tragedy. The indigna-

[1] "It is likely," says Wynne, "that this frenzy contributed to work off the ill humors of the New England people, to dissipate their bigotry, and to bring them to a more free use of their reason.

tion of the people, not loud but deep and strong, was directed with resistless force against those who had been particularly active in these insane enormities. Parris, the minister, who had been the chief agent in these acts of frenzy and folly, and who, beyond all question, made use of the popular feeling to gratify his own malignant feelings of revenge against obnoxious individuals, was compelled to leave his people. No entreaties were of any avail; the humblest confession could not save him; it was not fitting that he should minister at the altar of a merciful God, within sight of the graves of those whose entreaties for mercy he had despised. Noyes, the minister of Salem, consecrated his life to deeds of mercy; made a full confession; loved and blessed the survivors whom he had injured; asked forgiveness of all, and was by all forgiven. Cotton Mather, by artful appeals and publications in which he wilfully suppressed the truth, succeeded for a while in deceiving the public, and perhaps himself, as to the encouragement he had given to the proceedings at Salem. Still eager "to lift up a standard against the infernal enemy," he got up a case of witchcraft in his own parish; but the imposture was promptly exposed to ridicule by "a malignant, calumnious, and reproachful man," "a coal from hell," the unlettered but rational and intelligent Robert Calef; and Cotton Mather's share in these transactions was properly appreciated long before his death. His diary proves that he did not wholly escape the rising impeachment of the monitor within; and he, who had sought the foundation of faith in tales of wonder, himself "had tempta-

tions to atheism, and to the abandonment of all religion as a mere delusion." [1]

The jurors, also, signed and circulated a humble and solemn declaration of regret for the part they had borne in these trials. "We fear," they say, "we have been instrumental, with others, though ignorantly and unwittingly, to bring upon ourselves and this people of the Lord, the guilt of innocent blood." "We do humbly beg forgiveness, first of God for Christ's sake, for this our error, and pray that God would not impute the guilt of it to ourselves nor others; and we also pray, that we may be considered candidly and aright by the living sufferers, as being then under the power of a strong and general delusion, utterly unacquainted with and not experienced in matters of that nature. We do heartily ask forgiveness of you all, whom we have justly offended; and do declare, according to our present minds, we would none of us do such things again, on such grounds, for the whole world; praying you to accept of this, in way of satisfaction for our offence, and that you would bless the inheritance of the Lord, that he may be entreated for the land."

Nor was this all. The government of the prov-

[1] Bancroft, iii, 98. There is no good reason to suppose that Mather was entirely insincere in the active part he took in these proceedings. Although cunning, selfish, conceited, arrogant, and intolerant, he was not a cruel man, and he had a real horror of witchcraft. Indeed, the idea that the Salem witchcraft was the result of a combination between a few ministers will not bear a moment's examination, although the extreme to which it was carried, was undoubtedly owing to their efforts.

ince felt with the people, that the anger of a just God was upon them, and a proclamation was issued for a fast on the fourteenth of January, 1696; at which all God's people were enjoined to offer up prayers, "that He would show us what we know not, and help us wherein we have done amiss, to do so no more; and especially whatever mistakes on either hand have been fallen into, either by the body of this people, or any orders of men, referring to the late tragedy raised among us by satan and his instruments, through the awful judgment of God."

On the day of this public fast, Sewall, one of the judges who sat in all of these cases, sent to the pulpit a paper acknowledging his error in the late proceedings, and desiring to humble himself in the sight of God and His people. He stood up in his place in the old south church in Boston while it was read.

"Samuel Sewall, sensible of the repeated strokes of God upon himself and family, and being sensible that as to guilt contracted upon the opening of the late commission of oyer and terminer at Salem (to which the order for this day relates) he is upon many accounts more concerned than any that he knows of, desires to take the blame and the shame of it, asking pardon of men, and especially desiring prayers that God, who has an unlimited authority, would pardon that sin and all other his sins, personal and relative, and according to his infinite benignity and sovereignty, and not visit the sin of him or of any other upon himself or any of his, nor upon the land, but that He would powerfully defend him against all temptations

to sin for the future, and vouchsafe to him the efficacious saving conduct of His word and spirit." [1]

Stoughton, the chief justice, and an active promoter of these prosecutions, never repented. When informed of Sewall's confession, he said, that, for himself, when he sat in judgment, he had the fear of God before his eyes, and gave his opinion according to the best of his understanding; and although it might appear afterwards, that he had been in an error, yet he saw no necessity for a public acknowledgment of it.[2]

Nor was the work of restitution confined to that day. Many years afterwards a resolution was adopted by the general court, for the appointment of a committee to make inquiry into the condition and circumstances of individuals and families, that might have suffered from the "calamity of 1692," and a law was made reversing the attainders of those convicted, and making a grant for and in consideration

[1] In Sewall's diary under the date of April 11, 1692, is written: "Went to Salem, where, in the meetinghouse, the persons accused of witchcraft were examined; was a very great assembly; 't was awful to see how the afflicted persons were agitated." But in the margin is written with a tremulous hand, probably on a subsequent review, the lamenting Latin interjection *Væ, Væ, Væ.* Holmes's American Annals, i. 446. The frankness and sincerity of his confession atoned for his error; and he and his descendants long enjoyed the public favor. He was appointed chief justice of the superior court in 1718. He died in 1730, at the age of seventy.

[2] He was the first chief justice of the superior court, appointed in 1692. He lived and died a bachelor. Educated a minister, he possessed few legal attainments. He made atonement for his bigotry by contributing, in his life time, to the cause of education. He erected for the use of Harvard College the building known as Stoughton Hall.

of the losses sustained. In 1712, the church in Salem, to which Rebecca Nurse had belonged, at the solicitation of her son, repealed and reversed its censure by blotting out the record of her excommunication, "that it may no longer be a reproach to her memory, and an occasion of grief to her children." A similar step was taken in reference to Giles Cory, and the like justice was done to the memory of his wife, Martha Cory, by the church at Salem village. The records of that church also contain a most touching and pungent declaration of sorrow and repentance, made thirteen years afterwards by Ann Putnam, already mentioned as one of the principal accusers.[1]

Many of the witnesses confessed their error, and some of them acknowledged that they had been guilty of fraud and imposture; but none of those who had so unscrupulously sworn away the lives of innocent persons were ever brought to trial for the crime. Some of them, it is related, proved profligate persons, abandoned to all vice; others passed their lives in obscurity and disgrace. The past could not be repaired; the dead were beyond recall; and there seemed to be no disposition to renew the agitation, or inflict punishment on those who had been instrumental in the calamity.

The most obvious remark, in a legal point of view, which suggests itself respecting these trials, is the singular illegality of the mode in which they were

[1] Upham's Lectures, 25.

conducted. The executions for witchcraft must be considered, upon the great principles of the common law, as a series of judicial murders. The tribunal by authority of which they took place existed by no warrant of law. By the province charter of William and Mary, the general court alone was authorized to establish judicatories; consequently the act of governor Phipps, in erecting the special court of oyer and terminer, was a clear and direct usurpation of power, and the court by which so many lives were sacrificed was, beyond all controversy, an illegal tribunal.

Upon the illegality of the general proceedings it is scarcely necessary to remark. Every barrier, erected by the wisdom of the law for the protection of innocence, was broken down. Hearsay evidence of the most general character was unscrupulously admitted; irrelevant testimony was never excluded. What need to point out the utter perversion of law, in the manner of obtaining and using the confessions of those supposed to be bewitched? Why mention the monstrous doctrine of holding persons of unblemished reputation responsible for the acts of their apparitions or spectres, when they themselves were not present as to the body?

But neither is the common law nor are its professors responsible for these mistaken proceedings. The special court of oyer and terminer was essentially a POPULAR TRIBUNAL. There was not a regular lawyer concerned in its proceedings. The judges were not annoyed by the impertinent interference of advocates; the jury, untrammelled by the "quibbles of the law," were left to follow their own feelings and feed the pop-

ular excitement. The terrible scenes that ensued speak trumpet-tongued for an inflexible adherence to those rules and technical forms in legal proceedings, which have received the sanction of ages, and are incorporated into our jurisprudence. There is in the law a silent power which protects, while we are least conscious of needing protection; which saves when we are unconscious of danger. In times of unusual excitement and alarm, when the popular voice, directed by some skilful hand, demands a victim, its conservative influence is seen and acknowledged; it is the ark of safety to which the innocent fly for protection, strong in hope that it will bear them in safety above the troubled waters. But without the assistance of those who have made its principles the study of their lives, and its practice their daily occupation, its energies are powerless; or it may become, in the hands of ignorant and designing men, the most powerful engine of oppression which human ingenuity can invent — the most cruel murders and the most unjust punishments having at different times received the sanction of its forms. If it be said, that the learned and pious Sir Matthew Hale tried and condemned witches to death, the reply is at hand, that Lord Holt, equally learned as a lawyer, equally virtuous and conscientious as a man, and free from the religious peculiarities of Hale, opened the eyes of the public in England, to the folly of these trials by applying to them the severe and inflexible principles of the law.

The moral phenomena attending the Salem witchcraft form a subject of curious, rather than profitable

speculation, which is somewhat foreign to the objects of this work. It may be remarked generally, however, that this delusion, in some of its aspects, has never been satisfactorily explained. Time has rather obscured than thrown light upon the subject; and it must be placed in that large class of historical facts for which succeeding generations find it impossible to account. That it was attended by fraud and imposture, and that the people labored under a complete frenzy in their treatment of it, admits of no doubt. But that it was not all fraud and imposture; that there were certain appearances exhibited which it is impossible to explain upon any principles of natural philosophy then known, or now generally acknowledged; is as well established as any historical fact of which we have any record. "Flashy people," says Cotton Mather, on a review of the proceedings, "may burlesque these things, but when hundreds of the most sober people, in a country where they have as much mother wit certainly as the rest of mankind, know them to be true, nothing but the absurd and froward spirit of sadducism can question them."[1]

It is a matter of regret, that contemporary writers upon matters of this sort run into the wildest enthusiasm and receive every marvellous tale as true; or, on the other hand, go to the opposite extreme and reject every fact, however well established, which does not comport with their philosophical creed. It is the doctrine of true philosophy, sanctioned by the soundest dictates of religious faith, that the spiritual

[1] Magnalia Christi Americana, ii, 61.

and natural worlds, depending upon and acting with each other, are separated by the thinnest veil. It is easier to admit, that human affairs may sometimes reach the extremest limits of the one and pass within the confines of the other, than it is to deny human testimony of the highest order, and discredit the solemn asseverations of the most virtuous of men.

TRIAL OF THOMAS MAULE

BEFORE THE

SUPERIOR COURT OF JUDICATURE,

FOR A SLANDEROUS PUBLICATION AND BLASPHEMY,

SALEM, MASSACHUSETTS, 1696.

The following trial is chiefly compiled from a work entitled, "Persecutors Maul'd with their Own Weapons." I have seen but one copy of it, which is contained in the library of the Massachusetts Historical Society. The title page is gone, but the work appears to have been published soon after the trial, in 1696. The book purports to have been written by "Tho. Philathes," but is probably the production of Maule himself. From an examination of the state and court records, the general statements of the author appear to be correct, although the narrative is undoubtedly highly colored. The trial took place at Salem, in 1696, before his Majesty's Superior Court of Judicature, Court of Assize and General Gaol Delivery. The justices present were Thomas Danforth, Elisha Cooke, and Samuel Sewall. William Stoughton, the chief justice, was not present.

TRIAL OF THOMAS MAULE.

The difficulties between the government of Massachusetts and the quakers continued for many years after the more severe laws against the sect had been repealed. They were still regarded as dangerous intruders in the country; and they were not disposed to forget the treatment they had formerly received; but their declamations against those in authority were equally bold, if not so noisy, as when they first arrived in the colony. Every misfortune which occurred to the government, they attributed to a special judgment for their own sufferings; and, instead of sympathizing with others for the troubles incident to all, they kept themselves aloof, as if the dispensations of providence were not intended for their benefit. Their writers busily collected all the public calamities of the province, and held them up as the judgments of heaven, commenting upon them

with a severity of reproof which was not the less annoying, that it was somewhat deserved.[1]

Among those who rendered themselves particularly obnoxious on this account, was Thomas Maule, of Salem; a man of great influence among the quakers. By profession a merchant, he possessed great energy of character united with considerable wit, acute reasoning powers, and a ready eloquence. He was several times severely punished for his opinions, and as early as 1669, was sentenced to be whipped ten stripes, for saying that Mr. Higginson, the minister of Salem, preached lies, and that his instruction was the doctrine of devils.[2] About the year 1695, he published a book, entitled the "Truth set forth," in which he gave a particular account of "God's judgments upon the persecuting priests and rulers;" and among them he placed the Salem Witchcraft, which he commented upon in a style of cool and cutting sarcasm, that could scarcely be borne with patience by those in authority, who were very sensitive upon that subject.

Maule was accordingly arrested by order of the council; his house was searched, and all the books that were found were destroyed. When brought before the governor and council, in Boston, he refused to answer any questions, and demanded to be tried in his own county by a jury of his equals. He was then dismissed on heavy bail, and, at a session

[1] Sewel, the historian of the quakers, mentions as one of the judgments of heaven on the town of Boston, that no wheat could be raised within twenty miles of the place, since the hanging of the quakers in 1659.

[2] Felt's Annals of Salem, 236.

of the superior court, at Salem, in 1696, the grand jury made the following presentment against him. "At a superior court held in Salem, for our sovereign lord the king, in the county of Essex, in the province of the Massachusetts bay in New England, the tenth day of the ninth month, 1696, the grand jury do present Thomas Maule, of Salem, shopkeeper, for publishing or putting forth a book entitled, 'Truth held forth and maintained,' wherein is contained divers slanders against the churches and government of this province; and for saying at the honorable court at Ipswich, in May last, that there was as great mistakes in the scriptures as in his book."

Dr. Benjamin Bullivant appeared for the prisoner and put in a plea to the sufficiency of the presentment, alleging that the matters contained in it were too general and uncertain; that neither county, year or day were mentioned; that it was not laid upon oath; that the king's name was not mentioned; that if it were true the defendant said that there were as many mistakes in the scriptures as in his book, this was not punishable, the presentment not alleging that they were the holy scriptures or word of God, there being profane as well as sacred scriptures, and he might have referred to the former. These points were briefly replied to by Anthony Checkley,[1] the king's attorney, and the plea was overruled by the court. The prisoner was then put upon his defence, and addressed the court in his own behalf.

[1] He was a Boston merchant, and appears by the records to have been a party litigant to several suits while he was attorney general.

Maule. You who have set yourselves to be judges in this case against me, as you are invested with magisterial power, I respect you; but wherein you assume to yourselves the power of the bishops' court, as in this case, I no more value you than I do Jack-straw. If you would approve yourselves wise men, you ought to amend the many rents you have already made by the mismanagement of the trust committed to your charge. If you are resolved to make a rod for me, see that it be light for the more care of your own that is to come, for it is said by Him that cannot lie; "the same measure that men make, the same shall be made to them again." If your power continues long, he that now enjoys a good estate under your government, seven years hence may not be left worth a groat. You are set to watch over the people, but things have come to such a pass by your means, that they have greater need to watch over you.

Justice Danforth. Gentlemen of the jury: having taken a solemn oath to do the thing that is right in the sight of God as near as you can, you ought well to consider the horrid wickedness of Thomas Maule's setting forth the book now before you, in which there is contained a great deal of blasphemous matter against the churches and government of this province. You well know, that when the husbandman hath taken great care and labor to fence in his field of wheat, and there comes a ravenous creature and makes a gap through the fence for other like creatures to go through and spoil the corn, and to trample down and lay waste the husbandman's field, he will

use his utmost endeavor to destroy such a ravenous creature. How much more are we to preserve the hedge of that good Husbandman, with which He hath, by his ordinances, and good government, fenced and hedged his churches and people in this province! But this work of Thomas Maule wholly tends to overthrow all good in church and commonwealth, which God has planted amongst his people in this province. The cause and the book is now committed to your hands, to perform your duty relative to the same as God shall enable you.

Maule. Jurymen, look well to the work which you are now about to do. The case is committed to you, who are to be governed by the king's law. No part of that law have I broken. The book is no evidence in law against me, further than you are satisfied that I have written any thing contrary to sound doctrine and inconsistent with the holy scriptures. If you favor any of the unjust charge of the judges against me, and say there is such matter in the book as they charge me with, you must go to the printer for satisfaction, for I am ignorant of any such matter in the book. My hand is only to my copy, which is in the hands of the printer in another government, and my name in the printed book does not in law prove the same to be Thomas Maule, any more than the spectre evidence is in law sufficient to prove a person accused by such evidence to be a witch. Look well, therefore, to your work, for you have sworn true trial to make and just verdict to give. If you do me injustice the fault will be your own, for these my accusers on the bench are but as clerks to say "amen" to what you do.

This bold address to the jury accomplished its purpose. They soon returned a verdict of not guilty, at which the judges expressed much dissatisfaction, and asked how they could return such a verdict with the book before them? They replied, that the book was not sufficient evidence, for Thomas Maule's name was placed there by the printer. Besides, the matter contained in it was not cognizable by them, who were not a jury of divines, which this case required.

Justice Danforth. Thomas Maule may escape the hands of men, but he has not escaped the hand of God, who will find out all his evils and blasphemies against his church and people; and has reserved him for further judgment.

Maule. I am in no way guilty of your charge, but have great cause to praise God for my deliverance by the jury who are made instruments of freeing me out of the hands of them, who have manifested their unrighteous works against the people of God and the king's subjects, as their fathers did before them.

Justice Danforth. Take him away; take him away.

The prisoner was then discharged. The record of the case was thus made up. "Thomas Maule of Salem, shopkeeper, indicted by the grand jurors of our sovereign lord the king, upon their oaths, for publishing, or putting forth, a book entitled 'Truth held forth and maintained,' wherein is contained divers slanders against the government and churches of this province, as set out in the indictment, and being arraigned, pleaded not guilty, and for trial put

himself on the country; and a jury being accordingly impannelled and sworn, John Turner, foreman, (no exception being made,) and the indictment read, and pleas fully heard, the jury went forth and returned, bringing in their verdict, viz. They find the defendant not guilty according to indictment."

This trial is chiefly interesting as an exhibition of the independence of the jury, which is in striking contrast with the conduct of those jurors, who followed implicitly the directions of the court in the trials for witchcraft in 1692. It is probable, that the general feelings of disapprobation, with which those proceedings were regarded, did much to render jurors independent of the court, and to cause them to rely more on their own opinions in matters for which they alone were responsible. The allusion of Maule to the witch prosecutions was ingenious; and his whole defence, although inadequately reported, proves him to have been a man of strong mind, and not unworthy of the confidence placed in him by his own sect. He died in 1724.

TRIAL OF JOHN PETER ZENGER

BEFORE THE

SUPREME COURT OF NEW YORK,

FOR TWO LIBELS ON THE GOVERNMENT,

NEW YORK, 1735.

The trial of John Peter Zenger, for a libel, appears to have been published by himself soon after the trial in 1735. It was reprinted in 1756, and again, in 1770. The last mentioned edition is the earliest I have been able to find. The title page is as follows: "A Brief Narrative of the Case and Trial of John Peter Zenger, Printer of the New York Weekly Journal, for a Libel. 'In a free state such as ours is, all men ought to enjoy and express their minds freely. Tiberius Cæsar.' New York: Reprinted by Joseph Holt, at the Exchange. 1770." The work was reprinted in London in 1764. Soon after the first publication of Zenger's trial, some remarks were published, apparently by a tory lawyer, in which Hamilton's speech was most severely and very ably criticised. It was pronounced a species of legal quackery, and the star chamber was declared to be one of the most useful and beneficial institutions that ever existed in England! The writer asserts, that the doctrines of Mr. Hamilton are so at variance with the law, it could not be imagined that so wild and idle an harangue could have had any weight, but as the trial had been twice reprinted, and this extraordinary declamation had been mentioned with an air of applause and triumph in several newspapers, he thought fit to communicate his remarks to the public. These remarks and Zenger's trial are reprinted in the seventeenth volume of Howell's State Trials.

TRIAL OF JOHN PETER ZENGER.

Soon after the appointment of William Crosby as governor of New York, in 1732, he found himself involved in difficulties of a serious character, which soon placed him in direct collision with the people he was sent to govern, on account of certain illegal and unwarrantable proceedings, in relation to which he asked and would receive no advice from those he was in duty bound to consult. The house of assembly, chosen under royalist influences, took the side of the governor, and the council offered little or no resistance to his arbitrary measures. The courts of law were more difficult to manage. Morris, the chief justice, declined to obey an illegal order of the governor and was displaced, James de Lancey being appointed in his place. Complaints could only be heard through the press. A newspaper was established to defend the popular cause, in which able and popular writers attacked the governor and every branch of the government with great boldness and

zeal. The squibs, ballads, and serious charges of the Weekly Journal, irritated the governor and his council to madness; and John Peter Zenger, its printer, a poor, but energetic and bold man, rendered himself extremely obnoxious to those in authority. The new chief justice, de Lancey, made strong efforts to procure an indictment against him for a libel. "Sometimes," he told the grand jury, "heavy, half witted men get a knack of rhyming, but it is time to break them of it when they grow abusive, insolent and malicious with it." But the effort was in vain. The grand jury, fresh from the people, could not be induced to assist in the oppression of the people's friend.

The council then took up the matter, and, having examined four of Zenger's newspapers, pronounced them to be false, scandalous, malicious, and seditious libels, and ordered them to be burned by the common hangman. But when the order was read in the court of quarter sessions, and the sheriff moved for the compliance of the magistrates, the court would not suffer the order to be entered, and the aldermen offered a protest against it, as an arbitrary and illegal injunction. The sheriff then ordered his negro to burn the papers, which was accordingly done. Zenger was soon after arrested by order of the council, thrown into jail, and denied pen, ink and paper. His friends procured a writ of habeas corpus, and, upon argument, he was admitted to bail, but the amount was fixed so high that he was unable to procure it, and at the next session of the supreme court, efforts were vainly made by the judges and the attorney general to induce the grand jury to make a present-

ment against the prisoner. The attorney general then charged him by information for a misdemeanor in printing, in two numbers of his journal, the following "false, scandalous, malicious, and seditious libels" of and concerning governor Crosby and his council. "Your appearance in print, at last, gives a pleasure to many, though most wish you had come fairly into the open field, and not appeared behind retrenchments made of the supposed laws against libelling: these retrenchments, gentlemen, may soon be shown to you and all men to be very weak, and to have neither law nor reason for their foundation, so cannot long stand you in stead: therefore, you had much better as yet leave them, and come to what the people of this city and province think are the points in question. They think as matters now stand, that their liberties and properties are precarious, and that slavery is like to be entailed on them and their posterity, if some past things be not amended, and this they collect from many past proceedings." "One of our neighbors of New Jersey being in company, observing the strangers of New York full of complaints, endeavored to persuade them to remove into Jersey; to which it was replied, that would be leaping out of the frying pan into the fire; for, says he, we both are under the same governor, and your assembly have shown with a witness, what is to be expected from them; one that was then moving from New York to Pennsylvania, to which place it is reported several considerable men are removing, expressed in terms very moving, much concern for the circumstances of New York, and seemed to think them very much

owing to the influence that some men had in the administration; said he was now going from them, and was not to be hurt by any measures they should take; but could not help having some concern for the welfare of his countrymen, and should be glad to hear that the assembly would exert themselves as become them, by showing that they have the interest of their country more at heart, than the gratification of any private view of any of their members; or being at all affected by the smiles or frowns of a governor; both which ought equally to be despised, when the interest of their country is at stake. You, says he, complain of the lawyers, but I think the law itself is at an end. We see men's deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature, by which it seems to me, trials by juries are taken away when a governor pleases; men of known estates denied their votes, contrary to the received practice of the best expositor of any law. Who is there in that province that can call any thing his own, or enjoy any liberty longer than those in the administration will condescend to let them do it, for which reason I left it, as I believe more will."

James Alexander and William Smith, the counsel of Zenger, and popular leaders, immediately filed exceptions to the commissions of the judges: first, to the tenure, which was at will and pleasure, instead of during good behavior; second, to the investiture; third, to the form; fourth, to the want of evidence that the council concurred with the governor in their appointment. When the counsel of the

prisoner presented these exceptions, and moved that they be filed, the chief justice warned them of the consequences. They boldly and firmly answered that they had well considered their course and would abide the consequences. "I am so well satisfied," was the declaration of one of them, "of the right of the subject to take exception to the commission of a judge if he think such commission illegal, that I will stake my life on the point. The validity of the exceptions in the present case is another matter. I am ready to argue the point when the court will hear me." The subject was deferred to the next morning, when the counsel of Zenger again asked leave to argue the point. "We will neither hear you, nor allow the exceptions," was the reply of the chief justice; "you think to gain popularity and the applause of the people by opposing this court. The matter has come to the point, that we must leave the bench, or you the bar." An order was immediately passed excluding them from any farther practice in the court, and their names were struck from the roll of attorneys.

Meanwhile, the friends of Zenger secretly sent to Philadelphia and retained, in his behalf, the venerable Andrew Hamilton, then about eighty years of age, but in the full possession and enjoyment of his faculties. Hamilton was a distinguished barrister of that day. Educated in England, and in practice there before coming to this country, he had a good knowledge of law as a science, and took the highest rank in his profession. His honor, integrity and ability secured for him the respect and admiration

of many who differed from him in opinion. He was an ardent friend of free and liberal institutions, and, fearless of consequences, he denounced the encroachments and usurpations of those in authority with a boldness that excited their fear and hatred, while his easy and graceful eloquence, his powers of sarcasm, and his powerful declamations enraptured the people.[1] Such was the advocate to whom the defence of the New York printer was entrusted. His argument upon this occasion, which was regarded as the most celebrated event of that day, obtained for him complete success upon a ground which was afterwards vainly attempted in England. In the opinion of a patriot of the revolution, this trial, in which Hamilton bore so conspicuous a part, was the germ of American freedom, the morning star of that liberty, which subsequently revolutionized America.[2]

The trial took place in the supreme court of New York, on the fourth of August, 1735, before James de Lancey, chief justice, Frederick Felipse, second justice, and a jury. The counsel of the prisoner were Andrew Hamilton, of Philadelphia, and John Chambers of New York. Bradley, the attorney general, appeared for the prosecution. On his arraignment the defendant pleaded not guilty, and witnesses were in attendance to prove the fact, that the papers

[1] Proud, the historian of Pennsylvania, gives his speech upon the occasion of his taking leave of the assembly, of which he had been the speaker, on account of age and infirmities. This was in 1739, about five years after his celebrated defence of Zenger. He died in 1741.

[2] Governeur Morris. Hinton's History of the United States, 400.

which contained the alleged libels were printed and published by him. The junior counsel of the defendant was inclined to call for the proof of these facts, but his associate at once took the higher and more enlarged ground.

Hamilton. May it please your honor: I am concerned in this cause on the part of Mr. Zenger, the defendant. The information against my client was sent to me, a few days before I left home, with some instructions to let me know how far I might rely upon the truth of those parts of the papers set forth in the information, and which are said to be libellous. And though I am perfectly of opinion with the gentleman who has just now spoken, on the same side with me, as to the common course of proceedings, I mean in putting Mr. Attorney upon proving, that my client printed and published those papers mentioned in the information; yet I cannot think it proper for me, without doing violence to my own principles, to deny the publication of a complaint, which I think it is the right of every free-born subject to make, when the matters so published can be supported with truth; and, therefore, I will save Mr. Attorney the trouble of examining his witnesses to that point; and I do for my client confess, that he both printed and published the two newspapers set forth in the information; and I hope in so doing he has committed no crime.

Attorney General Bradley. Then, if your honor pleases, as Mr. Hamilton has confessed the printing and publishing these libels, I think the jury must find a verdict for the king; for supposing they were

true, the law says that they are not the less libellous for that; indeed, their being true is an aggravation of the crime.

Hamilton. Not so either, Mr. Attorney, there are two words to that bargain. I hope it is not our bare printing and publishing a paper, that will make it a libel: you will have something more to do, before you make my client a libeller; for the words themselves must be libellous, that is, "false, scandalous, and seditious," or else he is not guilty.

The attorney general, then made an elaborate argument upon the law of libel. He remarked upon the excellency as well as the use of government, and the great regard and reverence which had been constantly paid to it, both under the law and the gospel. By government, individuals were protected in their lives, religion and property, and, for these reasons, great care had always been taken to prevent every thing that might tend to scandalize magistrates and others concerned in the administration of government, especially the supreme magistrate. He mentioned many instances of punishments inflicted upon those who had attempted to bring the government into contempt by publishing false and scurrilous libels against it, or by speaking evil and scandalous words of men in authority, to the great disturbance of the public peace. A libel, he insisted, was a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that was alive, or the memory of one that was dead. If he was a private man, the libeller deserved a severe punishment, but if it was

against a magistrate or other public person, it was a greater offence; as this concerned not only the breach of the peace, but the scandal of the government; for what greater scandal of the government could there be, than to have corrupt or wicked magistrates to be appointed by the king, to govern his subjects under him? And a greater imputation to the state cannot be, than to suffer such corrupt men to sit in the sacred seat of justice, or to have any concern in the administration of justice: and he insisted, that whether the person defamed was a private man or a magistrate, whether living or dead, whether the libel was true or false, or if the party against whom it was made was of good or evil fame, it was nevertheless a libel; for in a settled state of government, the party aggrieved ought to complain for every injury done him, in the ordinary course of the law. As to its publication, the law had taken so great care of men's reputations, that if one maliciously repeated, or signed it, in the presence of another, or delivered the libel or a copy of it over, to scandalize the party, he was to be punished as the publisher of a libel. He said it was likewise evident, that libelling was an offence against the law of God. "Then said Paul, I wist not, brethren, that he was the high priest; for it is written, thou shalt not speak evil of the ruler of thy people." Acts xxiii. 5. "Presumptuous are they, self-willed, they are not afraid to speak evil of dignities." 2 Pet. ii. 10. He then insisted, that it was clear, both by the law of God and man, that it was a very great offence to speak evil of, or to revile, those in authority over us; and that

Mr. Zenger had offended in a most notorious and gross manner, in scandalizing his excellency the governor, who was the king's immediate representative, and the supreme magistrate of the province. He acknowledged, that the governor and the chief persons in the government had directed this prosecution, to put a stop to this scandalous and wicked practice of libelling and defaming his majesty's government and disturbing his majesty's peace.

Hamilton. May it please your honor: I agree with Mr. Attorney, that government is a sacred thing; but I differ very widely from him when he would insinuate, that the just complaints of a number of men, who suffer under a bad administration, is libelling that administration. Had I believed that to be law, I should not have given the court the trouble of hearing any thing I could say in this cause. I own, when I read the information, I had not the art to find out, without the help of Mr. Attorney's inuendos, that the governor was the person meant in every period of that newspaper. I was inclined to believe, that they were written by some, who, from an extraordinary zeal for liberty, had misconstrued the conduct of some persons in authority into crimes; and that Mr. Attorney, from his too great zeal for power, had exhibited this information, to correct the indiscretion of my client; and, at the same time, to show his superiors the great concern he had, lest they should be treated with any undue freedom. But from what Mr. Attorney has just now said, that this prosecution was directed by the governor and council; and from the extraordinary appearance of peo-

ple of all conditions, which I observe in court upon this occasion, I have reason to think, that those in the administration have by this prosecution something more in view, and that the people believe they have a good deal more at stake, than I apprehend: and, therefore, as it has become my duty, to be both plain and particular in this cause, I beg leave to bespeak the patience of the court.

Is it not surprising to see a subject, upon his receiving a commission from the king to be a governor of a colony in America, immediately imagining himself to be vested with all the prerogatives belonging to the sacred person of his prince? and, which is yet more astonishing, to see that a people can be so wild as to allow of, and acknowledge, those prerogatives and exemptions, even to their own destruction? Is it so hard a matter to distinguish between the majesty of our sovereign, and the power of a governor of the plantations? Is not this making very free with our prince, to apply that regard, obedience, and allegiance to a subject which is due only to our sovereign? And yet in all the cases which Mr. Attorney has cited, to show the duty and obedience we owe to the supreme magistrate, it is the king which is there meant and understood, though Mr. Attorney is pleased to urge them as authorities to prove the heinousness of Mr. Zenger's offence against the governor of New York. The several plantations are compared to so many large corporations, and perhaps not improperly; and can any one give an instance, that the mayor, or head of a corporation, ever put in a claim to the sacred rights of majesty? Let us not, while we are

pretending to pay a great regard to our prince and his peace, make bold to transfer that allegiance to a subject, which we owe to our king only.

What a strange doctrine it is, to press every thing for law here which is so in England! I believe we should not think it a favor, at present at least, to establish this practice. In England so great a regard and reverence is had to the judges, that, if any man strike another in Westminster Hall, while the judges are sitting, he shall lose his right hand, and forfeit his land and goods, for so doing. And though the judges here claim all the powers and authorities within this government, that a court of king's bench has in England; yet I believe Mr. Attorney will scarcely say, that such a punishment could be legally inflicted on a man for committing such an offence, in the presence of the judges sitting in any court within the province of New York. The reason is obvious; a quarrel or riot in New York cannot possibly be attended with those dangerous consequences that it might in Westminster Hall; nor will it be alleged, that any misbehavior to a governor in the plantations will, or ever ought to be, judged of or punished, as a like undutifulness would be to our sovereign.

From all which, I hope Mr. Attorney will not think it proper to apply those law cases to support the cause of his governor, which have only been judged where the king's safety or honor was concerned. It will not be denied, that a freeholder in the province of New York has as good a right to the sole and separate use of his lands, as a freeholder in England, who has a right to bring an action of trespass against his

neighbor, for suffering his horse or cow to come and feed upon his lands or eat his corn, whether inclosed or not inclosed; and yet I believe it would be looked upon as a strange attempt, for one man here to bring an action against another, whose cattle and horses feed upon his grounds not inclosed, or, indeed, for eating and treading down his corn, if that were not inclosed. Numberless are the instances of this kind that might be given, to show, that what is good law at one time and in one place, is not so at another time and in another place; so that, I think, the law seems to expect, that in these parts of the world men should take care, by a good fence, to preserve their property from the injury of unruly beasts: and perhaps there may be as good reason why men should take the same care, to make an honest and upright conduct a fence and security against the injury of unruly tongues.

Attorney General. I do not know what the gentleman means, by comparing cases of freeholders in England with the freeholders here. What has this case to do with actions of trespass, or men's fencing their grounds? The case before the court is, whether Mr. Zenger is guilty of libelling his excellency the governor of New York, and, indeed, the whole administration of the government? Mr. Hamilton has confessed the printing and publishing; and I think nothing is plainer, than that the words in the information are scandalous, and tend to sedition, and to disquiet the minds of the people of this province: if such papers are not libels, I think it may be said, there can be no such thing as a libel.

Hamilton. May it please your honor, I cannot agree with Mr. Attorney: for though I freely acknowledge, that there are such things as libels, yet I must insist at the same time, that what my client is charged with is not a libel; and I observed just now, that Mr. Attorney, in defining a libel, made use of the words *scandalous, seditious, and tend to disquiet the people;* but, whether with design or not I will not say, he omitted the word *false.*

Attorney General. I think I did not omit the word *false;* but it has been said already, that it may be a libel, notwithstanding it may be true.

Hamilton. In this I must still differ with Mr. Attorney; for I depend upon it, we are to be tried upon this information now before the court and jury, and to which we have pleaded not guilty; and by it we are charged with printing and publishing a certain "*false*, malicious, seditious and scandalous libel." This word *false* must have some meaning, or else how came it there? I hope Mr. Attorney will not say, he put it there by chance, and I am of opinion his information would not be good without it. But to show that it is the principal thing which, in my opinion, makes a libel, I put the case, that the information had been for printing and publishing a certain *true* libel, would that be the same thing? or could Mr. Attorney support such an information by any precedent in the English law? No; the falsehood makes the scandal, and both make the libel. And to show the court that I am in good earnest, and to save the court's time, and Mr. Attorney's trouble, I will agree, that if he can prove the facts charged

upon us, to be false, I will own them to be scandalous, seditious, and a libel. So the work seems now to be pretty much shortened, and Mr. Attorney has only to prove the words false, in order to make us guilty.

Attorney General. We have nothing to prove; you have confessed the printing and publishing; but if it was necessary, as I insist it is not, how can we prove a negative? But I hope some regard will be had to the authorities that have been produced; and that, supposing all the words to be true, yet that will not help them.

Hamilton. I did expect to hear that a negative cannot be proved; but every body knows there are many exceptions to that general rule: for if a man is charged with killing another, or stealing his neighbor's horse; if he is innocent in the one case, he may prove the man, said to be killed, to be really alive; and the horse, said to be stolen, never to have been out of his master's stable, and this I think is proving a negative. But we will save Mr. Attorney the trouble of proving a negative, and take the *onus probandi* upon ourselves, and prove those very papers that are called libels to be true.

Chief Justice de Lancey. You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence; a libel is not to be justified; for it is nevertheless a libel, that it is true.

Hamilton. I am sorry the court has so soon resolved on that piece of law; I expected first to have been heard to that point. I have not, in all my reading, met with an authority that says, we cannot

be admitted to give the truth in evidence, upon an information for a libel.

Chief Justice. The law is clear, that you cannot justify a libel.

Hamilton. I own that, may it please your honor, to be so; but, with submission, I understand the word justify there, to be a justification by plea, as it is in the case upon an indictment for murder, or an assault and battery; there the prisoner cannot justify, but must plead not guilty: yet it will not be denied but he may be, and always is, admitted to give the truth of the fact, or any other matter, in evidence, which goes to his acquittal; as in murder he may prove it was in defence of his life, his house, &c.; and in assault and battery, he may give in evidence that the other party struck first, and in both cases he will be acquitted. In this sense I understand the word justify, when applied to the case before the court.

Chief Justice. Show, I pray, that you can give the truth of a libel in evidence.

Hamilton. I am ready, both from what I understand to be the authorities in the case, and from the reason of the thing, to show that we may lawfully do so. But here I beg leave to observe, that an information for libel is the child, if not born, yet nursed and brought up to full maturity, in the court of star chamber.

Chief Justice. Mr. Hamilton, you will find yourself mistaken; for in Coke's Institutes you will find informations for libels, long before the court of star chamber.

Mr. Hamilton then went into a learned and ex-

tended examination of the law of libel, insisting with great energy and animation, that the doctrine, declaring that truth makes a worse libel than falsehood, was monstrous and ridiculous. He commented upon all the leading English decisions on the subject, and relied particularly on a case in which Lord Chief Justice Holt demanded of a person accused as a libeller: "Can you make it appear they are true? Have you any witnesses? You might have had subpœnas for your witnesses against this day. If you take upon you to write such things as you are charged with, it lies upon you to prove them true, at your peril. If you have any witnesses, I will hear them. How came you to write those books which are not true? If you have any witnesses, produce them. If you can offer any matter to prove what you have wrote, let us hear it." "Now, sir," said Mr. Hamilton, in conclusion, "we have acknowledged the printing and publishing of the papers set forth in the information, and agreeably to the rule laid down by Lord Holt, we are ready to prove them to be true, at our peril." The attorney general replied very briefly, insisting that the law was clear, that a libel could not be justified by proof that it was true.

Chief Justice. Mr. Hamilton, the court is of opinion, that you ought not to be permitted to prove the facts in the papers; these are the words of the book: "It is far from being a justification of a libel, that the contents thereof are true, or that the person upon whom it is made had a bad reputation, since the

greater appearance there is of truth in any malicious invective, so much the more provoking it is."

Hamilton. These are star chamber cases, and I was in hopes that practice had been dead with the court.

Chief Justice. Mr. Hamilton, the court have delivered their opinion, and we expect you will use us with good manners; you are not to be permitted to argue against the opinion of the court.

Hamilton. With submission, I have seen the practice in very great courts, and never heard it deemed unmannerly to ——

Chief Justice. After the court have declared their opinion, it is not good manners to insist upon a point, in which you are overruled.

Hamilton. I will say no more at this time; the court, I see, is against us on this point; and that, I hope, I may be allowed to say.

Chief Justice. Use the court with good manners, and you shall be allowed all the liberty you can reasonably desire.

Hamilton. I thank your honor. Then, gentlemen of the jury, it is to you we must now appeal for witnesses to the truth of the facts we have offered and are denied the liberty to prove; and let it not seem strange, that I apply myself to you in this manner; I am warranted so to do both by law and reason. The law supposes you to be summoned, out of the neighborhood where the fact is alleged to be committed; and the reason of your being taken out of the neighborhood is, because you are supposed

to have the best knowledge of the fact that is to be tried; and, were you to find a verdict against my client, you must take upon you to say, that the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous, and seditious; but of this I can have no apprehension. You are citizens of New York; you are really what the law supposes you to be, honest and lawful men; and the facts which we offer to prove were not committed in a corner; they are notoriously known to be true; and therefore in your justice lies our safety. And as we are denied the liberty of giving evidence, to prove the truth of what we have published, I will beg leave to lay it down as a standing rule in such cases, that the suppressing of evidence ought always to be taken for the strongest evidence: and I hope it will have that weight with you. But since we are not admitted to examine our witnesses, I will endeavor to shorten the dispute with Mr. Attorney, and to that end, I desire he would favor us with some standard definition of a libel, by which it may be certainly known, whether a writing be a libel, yea or not.

Attorney General. The books, I think, have given a very full definition of a libel; they say it is, in a strict sense, taken for a malicious defamation, expressed either in writing or printing, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. But it is said, that in a larger sense the notion of a libel may be applied to any defamation whatsoever, ex-

pressed either by signs or pictures; as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner. And since the chief cause, for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of the public peace, by provoking the parties injured, their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking, as that which is expressed by writing or printing, why should it not be equally criminal? From the same ground it seems also clearly to follow, that such scandal as is expressed in a scoffing and ironical manner makes a writing as properly a libel as that which is expressed in direct terms; as where a writing, in a taunting manner, reckoning up several acts of public charity done by one, says, "You will not play the Jew, nor the hypocrite," and so goes on in a strain of ridicule to insinuate, that what he did was owing to his vain glory; or where a writing, pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only which their enemies charge them with the want of, as by proposing such a one to be imitated for his courage, who is known to be a great statesman, but no soldier; and

another to be imitated for his learning, who is known to be a great general, but no scholar, &c., which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so.[1]

Hamilton. Ay, Mr. Attorney; but what certain standard rule have the books laid down, by which we can certainly know, whether the words or the signs are malicious? Whether they are defamatory? Whether they tend to the breach of the peace; and are a sufficient ground to provoke a man, his family, or friends, to acts of revenge, especially those of the ironical sort of words? And what rule have you to know when I write ironically? I think it would be hard, when I say, such a man is a very worthy, honest gentleman, and of fine understanding, that therefore I meant he was a knave or a fool.

Attorney General. I think the books are very full; it is said, in the book just now read; "That such scandal as is expressed in a scoffing and ironical manner, makes a writing as properly a libel, as that which is expressed in direct terms; as where a writing, in a taunting manner, reckoning up several acts of charity done by one, says, 'You will not play the Jew or the hypocrite;' and so goes on to insinuate, that what he did was owing to his vain glory, &c. Which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so." I think nothing can be plainer or more full than these words.

[1] 1 Hawkins, ch. 73, § 1. et seq.

Hamilton. I agree the words are very plain, and I shall not scruple to allow (when we are agreed that the words are false and scandalous, and were spoken in an ironical and scoffing manner,) that they are really libellous; but here still occurs the uncertainty, which makes it difficult to know, what words are scandalous, and what not; for you say, they may be scandalous, true or false: besides, how shall we know whether the words were spoke in a scoffing and ironical manner, or seriously? Or how can you know, whether the man did not think as he wrote? For, by your rule, if he did, it is no irony, and consequently no libel. But, under favor, Mr. Attorney, I think the same book, and the same section, will show us the only rule by which all these things are to be known. The words are these; "Which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if they had directly and expressly done so." Here it is plain, the words are scandalous, scoffing, and ironical, only as they are understood. I know no rule laid down in the books but this: I mean, as the words are understood.

Chief Justice. Mr. Hamilton, do you think it so hard to know when words are ironical, or spoken in a scoffing manner?

Hamilton. I own it may be known; but I insist, the only rule to know is, as I do or can understand them; I have no other rule to go by, but as I understand them.

Chief Justice. That is certain. All words are libellous or not, as they are understood. Those who

are to judge of the words, must judge whether they are scandalous or ironical, tend to the breach of the peace, or are seditious: there can be no doubt of it.

Hamilton. I thank your honor; I am glad to find the court of this opinion. Then it follows that those twelve men must understand the words in the information to be scandalous, that is to say, false; for I think it is not pretended that they are of the ironical sort; and when they understand the words to be so, they will say we are guilty of publishing a false libel, and not otherwise.

Chief Justice. No, Mr. Hamilton; the jury may find that Zenger printed and published those papers, and leave it to the court to judge whether they are libellous; you know this is very common; it is in the nature of a special verdict, where the jury leave the matter of law to the court.

Hamilton. I know, may it please your honor, the jury may do so; but I do likewise know, they may do otherwise. I know they have the right beyond all dispute, to determine both the law and the fact, and where they do not doubt of the law, they ought to do so. This manner of leaving it to the judgment of the court whether the words are libellous or not, in effect renders juries useless, to say no worse, in many cases; but this I shall have occasion to speak to by and by; and I will, with the court's leave, proceed to examine the inconveniencies that must inevitably arise from the doctrines Mr. Attorney has laid down; and I observe, in support of this prosecution, he has frequently repeated the words taken from the case *de Libellis famosis* in the fifth of Coke.

This is indeed the leading case, to which almost all the other cases upon the subject of libels refer; and I must insist upon saying, that according as this case seems to be understood by the court and Mr. Attorney, it is not law at this day. For though I own it to be base and unworthy, to scandalize any man, yet I think it is even villanous to scandalize a person of public character, and I will go so far into Mr. Attorney's doctrine as to agree, that if the faults, mistakes, nay even the vices of such a person be private and personal, and do not affect the peace of the public, or the liberty or property of our neighbor, it is unmanly and unmannerly to expose them either by word or writing. But when a ruler of a people brings his personal failings, but much more his vices, into his administration, and the people find themselves affected by them, either in their liberties or properties, that will alter the case mightily; and all the high things that are said in favor of rulers, and of dignities, and upon the side of power, will not be able to stop people's mouths when they feel themselves oppressed, — I mean in a free government. It is true in times past it was a crime to speak truth, and in that terrible court of star chamber, many worthy and brave men suffered for so doing; and yet even in that court, and in those bad times, a great and good man durst say, what I hope will not be taken amiss of me to say in this place, that the practice of informations for libels is a sword in the hands of a wicked king, and an arrant coward, to cut down and destroy the innocent; the one cannot, because of his high station, and the other

dares not, because of his want of courage, revenge himself in another manner.

Attorney General. Pray Mr. Hamilton, have a care what you say, do not go too far either; I do not like those liberties.

Hamilton. Sure, Mr. Attorney, you will not make any applications; all men agree that we are governed by the best of kings, and I cannot see the meaning of Mr. Attorney's caution; my well known principles, and the sense I have of the blessings we enjoy under his present majesty, make it impossible for me to err, and I hope, even to be suspected, in that point of duty to my king. May it please your honor, I was saying, that notwithstanding all the duty and reverence claimed by Mr. Attorney to men in authority, they are not exempt from observing the rules of common justice, either in their private or public capacities; the laws of our mother country know no exemption. It is true, men in power are harder to be come at for wrongs they do, either to a private person, or to the public; especially a governor in the plantations, where they insist upon an exemption from answering complaints of any kind in their own government. We are indeed told, and it is true, they are obliged to answer a suit in the king's courts at Westminster, for a wrong done to any person here; but do we not know how impracticable this is to most men among us, — to leave their families, who depend upon their labor and care for their livelihood, and carry evidences to Britain, and at a great, nay, a far greater expense than almost any of us are able to bear, only to prosecute a governor for an injury done

here. But when the oppression is general, there is no remedy even that way; no, our constitution has, (blessed be God) given us an opportunity, if not to have such wrongs redressed, yet by our prudence and resolution to prevent in a great measure the committing of such wrongs, by making a governor sensible that it is his interest to be just to those under his care; for such is the sense, that men in general (I mean freemen) have of common justice, that when they come to know, that a chief magistrate abuses the power, with which he is trusted for the good of the people, and is attempting to turn that very power against the innocent, whether of high or low degree, I say, mankind in general seldom fail to interpose, and as far as they can, prevent the destruction of their fellow subjects. And has it not often been seen (and I hope it will always be seen) that when the representatives of a free people are by just representations or remonstrances, made sensible of the sufferings of their fellow subjects, by the abuse of power in the hands of a governor, they have declared (and loudly too) that they were not obliged by any law to support a governor who goes about to destroy a province or colony, or their privileges, which by his majesty he was appointed, and by the law he is bound, to protect and encourage. But I pray it may be considered, of what use is this mighty privilege, if every man that suffers must be silent? And if a man must be taken up as a libeller, for telling his sufferings to his neighbor? I know it may be answered, have you not a legislature? Have you not a house of representatives to whom you may

complain? And to this I answer, we have. But what then? Is an assembly to be troubled with every injury done by a governor? Or are they to hear of nothing but what those in the administration will please to tell them? Or what sort of a trial must a man have? and how is he to be remedied: especially if the case were, as I have known it to happen in America in my time; that a governor who has places (I will not say pensions, for I believe they seldom give that to another which they can take to themselves) to bestow, and can or will keep the same assembly, after he has modeled them so as to get a majority of the house in his interest, for near twice seven years together? I pray, what redress is to be expected for an honest man, who makes his complaint against a governor, to an assembly who may properly enough be said to be made by the same governor against whom the complaint is made? The thing answers itself. No, it is natural, it is a privilege. I will go farther, it is a right which all freemen claim, and are entitled to complain, when they are hurt; they have a right publicly to remonstrate against abuses of power, in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men in authority, and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it as one of the greatest blessings heaven can bestow. And when a house of assembly composed of honest freemen sees the general bent of the people's inclinations, that is it, which must and will — I am sure it ought to — weigh with

a legislature, in spite of all the craft, caressing and cajoling, made use of by a governor, to divert them from hearkening to the voice of their country.

As we all very well understand the true reason, why gentlemen take so much pains and make such great interest to be appointed governors, so is the design of their appointment not less manifest. We know his majesty's gracious intentions to his subjects; he desires no more than that his people in the plantations should be kept up to their duty and allegiance to the crown of Great Britain, that peace may be preserved amongst them, and justice impartially administered; that we may be governed so as to render us useful to our mother country, by encouraging us to make and raise such commodities as may be useful to Great Britain. But will any one say, that all or any of these good ends are to be effected, by a governor's setting his people together by the ears, and by the assistance of one part of the people plaguing and plundering the other? The commission which governors bear, while they execute the powers given them, according to the intent of the royal grantor, expressed in their commissions, requires and deserves very great reverence and submission; but when a governor departs from the duty enjoined on him by his sovereign, and acts as if he was less accountable than the royal hand that gave him all that power and honor which he is possessed of; this sets people upon examining and inquiring into the power, authority, and duty of such a magistrate, and to compare those with his conduct; and just as far as they find he exceeds the bounds of his authority, or falls short in

doing impartial justice to the people under his administration, so far they very often, in return, come short in their duty to such a governor. For power alone will not make a man beloved, and I have heard it observed, that the man who was neither good nor wise before his being made a governor, never mended upon his preferment, but has been generally observed to be worse: for men who are not endued with wisdom and virtue can only be kept in bounds by the law; and by how much the further they think themselves out of the reach of the law, by so much the more wicked and cruel men are. I wish there were no instances of the kind at this day. And wherever this happens to be the case of a governor, unhappy are the people under his administration, and in the end he will find himself so too; for the people will neither love him nor support him.

I make no doubt but there are those here, who are zealously concerned for the success of this prosecution; and yet I hope there are not many, and even some of those, I am persuaded (when they consider to what lengths such prosecutions may be carried, and how deeply the liberties of the people may be affected by such means,) will not all abide by their present sentiments; I say, not all: for the man who from an intimacy and acquaintance with a governor has conceived a personal regard for him, the man who has felt none of the strokes of his power, the man who believes that a governor has a regard for him and confides in him, it is natural for such men to wish well to the affairs of such a governor; and as they may be men of honor and generosity, they may

and no doubt will wish him success, so far as the rights and privileges of their fellow citizens are not affected. But as men of honor, I can apprehend nothing from them; they will never exceed that point.

There are others that are under stronger obligations, and those are such as are in some sort engaged in support of a governor's cause, by their own or their relations' dependence on his favor, for some post or preferment; such men have what is commonly called duty and gratitude, to influence their inclinations, and oblige them to go his lengths. I know men's interests are very near to them, and they will do much, rather than forego the favor of a governor, and a livelihood at the same time; but I can with very just grounds hope, even from those men, whom I will suppose to be men of honor and conscience too, that when they see the liberty of their country is in danger, either by their concurrence, or even by their silence, they will, like Englishmen, and like themselves, freely make a sacrifice of any preferment or favor, rather than be accessary to destroying the liberties of their country, and entailing slavery upon their posterity.

There is indeed another set of men, of whom I have no hopes, I mean such, who lay aside all other considerations, and are ready to join with power in any shapes, and with any man or sort of men, by whose means or interest they may be assisted to gratify their malice and envy against those whom they have been pleased to hate; and that for no other reason, but because they are men of abilities

and integrity, or at least are possessed of some valuable qualities, far superior to their own. But as envy is the sin of the devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless sort of men, nor will their opinions or inclinations have any influence upon this trial. But to proceed; I beg leave to insist, that the right of complaining or remonstrating is natural; and the restraint upon this natural right is the law only, and that those restraints can only extend to what is false: for as it is truth alone which can excuse or justify any man for complaining of a bad administration, I as frankly agree, that nothing ought to excuse a man who raises a false charge or accusation, even against a private person, and that no manner of allowance ought to be made to him, who does so against a public magistrate. Truth ought to govern the whole affair of libels, and yet the party accused runs risk enough even then; for if he fails of proving every tittle of what he has written, and to the satisfaction of the court and jury too, he may find to his cost, that when the prosecution is set on foot by men in power, it seldom wants friends to favor it. And from thence, it is said, has arisen the great diversity of opinions among judges, about what words were or were not scandalous or libellous. I believe it will be granted, that there is not greater uncertainty in any part of the law, than about words of scandal; it would be misspending of the court's time to mention the cases; they may be said to be numberless; and therefore the utmost care ought to be taken in following precedents; and the times

when the judgments were given, which are quoted for authorities in the case of libels, are much to be regarded. I think it will be agreed, that ever since the time of the star chamber, where the most arbitrary and destructive judgments and opinions were given, that ever an Englishman heard of, at least in his own country: I say, prosecutions for libels since the time of that arbitrary court, and until the glorious revolution, have generally been set on foot at the instance of the crown or its ministers; and it is no small reproach to the law, that these prosecutions were too often and too much countenanced by the judges, who held their places at pleasure, (a disagreeable tenure to any officer, but a dangerous one in the case of a judge.) To say more to this point may not be proper. And yet I cannot think it unwarrantable, to show the unhappy influence that a sovereign has sometimes had, not only upon judges, but even upon parliaments themselves.

It has already been shown, how the judges differed in their opinions about the nature of a libel, in the case of the seven bishops. There you see three judges of one opinion, that is, of a wrong opinion, in the judgment of the best men in England, and one judge of a right opinion. How unhappy might it have been for all of us at this day, if that jury had understood the words in that information as the court did? Or if they had left it to the court, to judge whether the petition of the bishops was or was not a libel? No, they took upon them, to their immortal honor, to determine both law and fact, and to understand the petition of the bishops to be no libel; that

is, to contain no falsehood nor sedition, and therefore found them not guilty. And remarkable is the case of Sir Samuel Barnardiston, who was fined ten thousand pounds for writing a letter, in which, it may be said, none saw any scandal or falsehood but the court and jury; for that judgment was afterwards looked upon as a cruel and detestable judgment, and therefore was reversed by parliament. Many more instances might be given of the complaisance of court judges, about those times, and before; but I will mention only one case more, and that is the case of Sir Edward Hales, who though a Roman Catholic, was by king James II. preferred to be a colonel of his army, notwithstanding the statute of 25 Charles II., chapter second, by which it is provided, that every one that accepts of an office, civil or military, &c., shall take the oaths, subscribe the declaration, and take the sacrament, within three months, &c., otherwise he is disabled to hold such office, and the grant for the same to be null and void, and the party to forfeit five hundred pounds. Sir Edward Hales did not take the oaths or sacrament, and was prosecuted for five hundred pounds, for exercising the office of a colonel, by the space of three months, without conforming as in the act is directed. Sir Edward pleads, that the king by his letters patents did dispense with his taking the oaths and sacraments, and subscribing the declaration, and had pardoned the forfeiture of five hundred pounds. And whether the king's dispensation was good, against the said act of parliament? was the question. I shall mention no more of this case, than to show how in the

reign of an arbitrary prince, where judges hold their seats at pleasure, their determinations have not always been such as to make precedents of, but the contrary; and so it happened in this case, where it was solemnly judged, that, notwithstanding this act of parliament, made in the strongest terms, for preservation of the protestant religion, that yet the king had, by his royal prerogative, a power to dispense with that law; and Sir Edward Hales was acquitted by the judges accordingly. So the king's dispensing power, being by the judges set up above the act of parliament, this law, which the people looked upon as their chief security against popery and arbitrary power, was by this judgment rendered altogether ineffectual. But this judgment is sufficiently exposed by Sir Edward Atkins,[1] late one of the judges of the court of common pleas, in his enquiry into the king's power of dispensing with penal statutes; where it is shown, who it was that first invented dispensations; how they came into England; what ill use has been made of them there; and all this principally owing to the countenance given them by the judges. He says of the dispensing power,[2] the pope was the inventor of it; our kings have borrowed it from them; and the judges have from time to time nursed and dressed it up, and given it countenance; and it is still upon the growth, and encroaching, till it has almost subverted all law, and made the regal power absolute, if not dissolute. This seems not

[1] Sir Edward Atkins's Enquiry into the power of dispensing with penal statutes.

[2] Postscript to the Enquiry, p. 51.

only to show how far judges have been influenced by power, and how little cases of this sort, where the prerogative has been in question in former reigns, are to be relied upon for law: but I think it plainly shows too, that a man may use a greater freedom with the power of his sovereign and the judges in Great Britain, than it seems he may with the power of a governor in the plantations, who is but a fellow subject. Are these words with which we are charged, like these? Do Mr. Zenger's papers contain any such freedoms with his governor or his council, as Sir Edward Atkins has taken, with the regal power and the judges in England? And yet I never heard of any information brought against him for these freedoms.

If then, upon the whole, there is so great an uncertainty among judges, learned and great men, in matters of this kind; if power has had so great an influence on judges, how cautious ought we to be in determining by their judgments, especially in the plantations, and in the case of libels? There is heresy in law, as well as in religion, and both have changed very much; and we well know that it is not two centures ago that a man would have been burnt as an heretic, for owning such opinions in matters of religion, as are publicly written and printed at this day. They are fallible men, it seems, and we take liberty not only to differ from them in religious opinions, but to condemn them and their opinions too; and I must presume, that in taking these freedoms in thinking and speaking about matters of faith or religion, we are in the right: for though it is said there are very great liberties of this kind taken in New

York, yet I have heard of no information preferred by Mr. Attorney for any offences of this sort. From which I think it is pretty clear, that in New York, a man may make very free with his God, but he must take special care what he says of his governor. It is agreed upon by all men, that this is a reign of liberty; and while men keep within the bounds of truth, I hope they may with safety both speak and write their sentiments of the conduct of men in power; I mean of that part of their conduct only, which affects the liberty or property of the people under their administration; were this to be denied, then the next step may make them slaves; for what notions can be entertained of slavery, beyond that of suffering the greatest injuries and oppressions, without the liberty of complaining; or if they do, to be destroyed, body and estate, for so doing?

It is said and insisted on by Mr. Attorney, that government is a sacred thing; that it is to be supported and reverenced; it is government that protects our persons and estates; that prevents treasons, murders, robberies, riots, and all the train of evils that overturns kingdoms and states, and ruins particular persons; and if those in the administration, especially the supreme magistrate, must have all their conduct censured by private men, government cannot subsist. This is called a licentiousness not to be tolerated. It is said, that it brings the rulers of the people into contempt, and their authority not to be regarded, and so in the end, the laws cannot be put in execution. These I say, and such as these, are the general topics insisted upon by men in power, and their advocates. But I wish it might be consid-

ered at the same time, how often it has happened, that the abuse of power has been the primary cause of these evils, and that it was the injustice and oppression of these great men, which has commonly brought them into contempt with the people. The craft and art of such men is great, and who, that is the least acquainted with history or law can be ignorant of the specious pretences, which have often been made use of by men in power, to introduce arbitrary rule, and destroy the liberties of a free people. I will give two instances; and as they are authorities not to be denied, nor can be misunderstood, I presume they will be sufficient.

The first is a statute of Henry VII., the preamble of which will prove all, and more than I have alleged. It begins, "the king our sovereign lord remembereth how by unlawful maintenances, giving of liveries, signs and tokens, &c., untrue demeanings of sheriffs in making of panels, and other untrue returns, by taking of money, by injuries, by great riots and unlawful assemblies: the policy and good rule of this realm is almost subdued; and for the not punishing these inconveniences, and by occasion of the premises, little or nothing may be found by inquiry, &c., to the increase of murders, &c., and unsureties of all men living, and losses of their lands and goods."[1] Here is a fine and specious pretence for introducing the remedy, as it is called, which is provided by this act, that is; instead of being lawfully accused by twenty-four good and lawful men

[1] Statute of 3 Henry VII., chap. 1.

of the neighborhood, and afterwards tried by twelve like lawful men, here is a power given to the lord chancellor, lord treasurer, the keeper of the king's privy seal, or two of them, calling to them a bishop, a temporal lord, and other great men mentioned in the act, (who, it is to be observed, were all to be dependants on the court) to receive information against any person for any of the misbehaviors recited in that act, and by their discretion to examine, and to punish them according to their demerit.

The second statute I proposed to mention, is a subsequent act of the same king, the preamble of which has the like fair pretences as the former; for the king calling to his remembrance the good laws made against the receiving of liveries, &c., unlawful extortions, maintenances, embracery, &c., unlawful games, &c., and many other great enormities, and offences committed against many good statutes, to the displeasure of Almighty God, which, the act says, could not, nor yet can, be conveniently punished by the due order of the law, except it were first found by twelve men, &c., which for the causes aforesaid, will not find nor yet present the truth. And therefore the same statute directs, that the justices of assize, and justices of the peace shall, upon information for the king before them made, have full power, by their discretion, to hear and determine all such offences.[1] Here are two statutes that are allowed to have given the deepest wound to the liberties of the people of England, of any that I remember to have been made,

[1] Statute of 11 Henry VII., chap. 3.

unless it may be said, that the statute made in the time of Henry VIII., by which his proclamations were to have the effect of laws, might in its consequence be worse. And yet we see the plausible pretences found out by the great men to procure these acts. And it may justly be said, that by those pretences the people of England were cheated or awed into the delivering up their ancient and sacred rights of trials by grand and petit juries. I hope to be excused for this expression, seeing my lord Coke calls it an unjust and strange act, that tended in its execution to the great displeasure of Almighty God, and the utter subversion of the common law.

These, I think, make out what I alleged, and are flagrant instances of the influence of men in power, even upon the representatives of a whole kingdom. From all which I hope it will be agreed, that it is a duty which all good men owe to their country, to guard against the unhappy influence of ill men when intrusted with power, and especially against their creatures and dependants, who, as they are generally more necessitous, are surely more covetous and cruel. But it is worthy of observation, that though the spirit of liberty was borne down and oppressed in England at that time, yet it was not lost; for the parliament laid hold of the first opportunity to free the subjects from the many insufferable oppressions and outrages committed upon their persons and estates by color of these acts, the last of which being deemed the most grievous, was repealed in the first year of Henry VIII. Though it is to be observed, that Henry VII. and his creatures reaped such great advantages by the griev-

ous oppressions and exactions, grinding the faces of the poor subjects, as my lord Coke says, by color of this statute by information only, that a repeal of this act could never be obtained during the life of that prince. The other statute, being the favorite law for supporting arbitrary power, was continued much longer. The execution of it was by the great men of the realm; and how they executed it, the sense of the kingdom, expressed in the statute of the 17th of Charles I. (by which the court of star chamber, the soil where informations grew rankest was abolished,) will best declare. In that statute, Magna Charta, and the other statutes made in the time of Edward III., which, I think, are no less than five, are particularly enumerated as acts, by which the liberties and privileges of the people of England were secured to them, against such oppressive courts as the star chamber and others of the like jurisdiction. And the reason assigned for their pulling down the star chamber is, "that the proceedings, censures and decrees of the court of star chamber, even though the great men of the realm, nay, and a bishop too (holy man) were judges, had by experience been found to be an intolerable burthen to the subject, and the means to introduce an arbitrary power and government." And therefore, that court was taken away, with all the other courts in that statute mentioned, having like jurisdiction.

I do not mention this statute, as if, by the taking away the court of star chamber, the remedy for many of the abuses or offences censured there was likewise taken away; no, I only intend by it to show,

that the people of England saw clearly the danger of trusting their liberties and properties to be tried, even by the greatest men in the kingdom, without the judgment of a jury of their equals. They had felt the terrible effects of leaving it to the judgment of these great men to say what was scandalous and seditious, false or ironical. And if the parliament of England thought this power of judging was too great to be trusted with men of the first rank in the kingdom, without the aid of a jury, how sacred soever their characters might be, and therefore restored to the people their original right of trial by juries, I hope to be excused for insisting, that by the judgment of a parliament, from whence no appeal lies, the jury are the proper judges of what is false, at least, if not of what is scandalous and seditious. This is an authority not to be denied; it is as plain as it is great; and, to say that this act indeed did restore to the people trial by juries, which was not the practice of the star chamber, but that it did not give the jurors any new authority, or any right to try matters of law, I say this objection will not avail; for I must insist, that where matter of law is complicated with matter of fact, the jury have a right to determine both. As for instance, upon indictment for murder, the jury may, and almost constantly do, take upon them to judge whether the evidence will amount to murder or manslaughter, and find accordingly; and I must say I cannot see, why in our case the jury have not at least as good a right to say, whether our newspapers are a libel or no libel, as another jury

has to say, whether killing of a man is murder or manslaughter.

The right of the jury, to find such a verdict as they in their conscience do think is agreeable to their evidence, is supported by the authority of Bushel's case, Vaughan's Reports, p. 135, beyond any doubt. For, in the argument of that case, the chief justice, who delivered the opinion of the court, lays it down for law,[1] "That in all general issues, as upon *non cul.* in trespass, *non tort, nul disseisin* in assize, &c., though it is matter of law, whether the defendant is a trespasser, a disseiser, &c., in the particular cases in issue, yet the jury find not (as in a special verdict) the fact of every case, leaving the law to the court; but find for the plaintiff or defendant upon the issue to be tried, wherein they resolve both law and fact complicately." It appears by the same case, that though the discreet and lawful assistance of the judge, by way of advice to the jury, may be useful; yet that advice or direction ought always to be upon supposition, and not positive, and upon coercion. The reason given in the same book is, "because the judge as judge cannot know what the evidence is which the jury have; that is, he can only know the evidence given in court; but the evidence which the jury have, may be of their own knowledge, as they are returned of the neighborhood. They may also know from their own knowledge, that what is sworn in court is not true; and they may know the witnesses to be

[1] Vaughan's Reports, 150.

stigmatized, to which the court may be strangers." But what speaks most to my purpose, is, that suppose the court did really know all the evidence the jury know, yet in that case it is agreed, "that the judge and jury may differ in the result of their evidence as well as two judges may," which often happens. And the judge subjoins the reason, why it is no crime for a jury to differ in opinion from the court, where he says, "That a man cannot see with another's eye, nor hear by another's ear; no more can a man conclude or infer the thing by another's understanding or reasoning." From all which I insist it is very plain, "that the jury are by law at liberty (without any affront to the judgment of the court) to find both the law and the fact, in our case," as they did in the case I am speaking to, which I will beg leave just to mention, and it was this. Mr. Penn and Mead being Quakers, and having met in a peaceable manner, after being shut out of their meetinghouse, preached in Grace-church street, in London, to the people of their own persuasion, and for this they were indicted; and it was said, "that they with other persons, to the number of three hundred, unlawfully and tumultuously assembled, to the disturbance of the peace," &c. To which they pleaded, not guilty. And the petit jury being sworn to try the issue between the king and the prisoners, that is, whether they were guilty, according to the form of the indictment; here there was no dispute but they were assembled together, to the number mentioned in the indictment; but, "whether that meeting together was riotously, tumultuously, and to the disturbance of the peace,

was the question." And the court told the jury it was, and ordered the jury to find it so: "For," said the court, "the meeting was the matter of fact, and that is confessed, and we tell you it is unlawful, for it is against the statute; and the meeting being unlawful, it follows of course that it was tumultuous, and to the disturbance of the peace." But the jury did not think fit to take the court's word for it; for they could neither find riot, tumult, or any thing tending to the breach of the peace, committed at that meeting; and they acquitted Mr. Penn and Mead. In doing of which they took upon them to judge both the law and the fact; at which the court (being themselves true courtiers) were so much offended, that they fined the jury forty marks apiece, and committed them till paid. But Mr. Bushel, who valued the right of a juryman and the liberty of his country more than his own, refused to pay the fine; and was resolved (though at a great expense and trouble too) to bring, and did bring, his *habeas corpus*, to be relieved from his fine and imprisonment, and he was released accordingly; and this being the judgment in his case, it is established for law, "that the judges, how great soever they be, have no right to fine, imprison, or punish a jury, for not finding a verdict according to the direction of the court." And this I hope is sufficient to prove, that jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging of the lives, liberties or estates of their fellow-subjects. And so I have done with this point.

This is the second information for libelling of a governor that I have known in America; and the first, though it may look like a romance, yet, as it is true, I will beg leave to mention it. Governor Nicholson, who happened to be offended with one of his clergy, met him one day upon the road, and, as was usual with him, under the protection of his commission, used the parson with the worst of language, threatened to cut off his ears, slit his nose, and at last to shoot him through the head. The parson, being a reverend man, continued all this time uncovered in the heat of the sun, until he found an opportunity to fly for it; and coming to a neighbor's house, felt himself very ill of a fever, and immediately writes for a doctor; and, that his physician might be the better judge of his distemper, he acquainted him with the usage he had received; concluding, that the governor was certainly mad, for that no man in his senses would have behaved in that manner. The doctor unhappily shows the parson's letter; the governor came to hear of it; and so an information was preferred against the poor man, for saying he believed the governor was mad; and it was laid in the information to be false, scandalous and wicked, and wrote with intent to move sedition among the people, and bring his excellency into contempt. But, by an order from the late queen Anne, there was a stop put to that prosecution, with sundry others, set on foot by the same governor, against gentlemen of the greatest worth and honor in that government.

And may I not be allowed, after all this, to say,

that by a little countenance, almost any thing which a man writes, may, with the help of that useful term of art called an innuendo, be construed to be a libel, according to Mr. Attorney's definition of it; that whether the words are spoke of a person of a public character, or of a private man, whether dead or living, good or bad, true or false, all make a libel; for, according to Mr. Attorney, after a man hears a writing read, or reads and repeats it, or laughs at it, they are all punishable. It is true, Mr. Attorney is so good as to allow, after the party knows it to be a libel; but he is not so kind as to take the man's word for it.

If a libel is understood in the large and unlimited sense urged by Mr. Attorney, there is scarce a writing I know that may not be called a libel, or scarce any person safe from being called to an account as a libeller: for Moses, meek as he was, libelled Cain; and who is it that has not libelled the devil? For, according to Mr. Attorney, it is no justification to say one has a bad name. Echard has libelled our good king William. Burnet has libelled, among many others, king Charles and king James, and Rapin has libelled them all. How must a man speak or write, or what must he hear, read or sing, or when must he laugh, so as to be secure from being taken up as a libeller? I sincerely believe, that were some persons to go through the streets of New York now-a-days, and read a part of the Bible, if it was not known to be such, Mr. Attorney, with the help of his innuendoes, would easily turn it into a libel. As, for instance, the sixteenth verse of the ninth chapter

of Isaiah, "The leaders of the people cause them to err, and they that are led by them are destroyed." But should Mr. Attorney go about to make this a libel, he would read it thus: "The leaders of the people (innuendo, the governor and council of New York) cause them (innuendo, the people of this province) to err, and they (the people of this province meaning) are destroyed (innuendo, are deceived into the loss of their liberty) which is the worst kind of destruction. Or if some person should publicly repeat, in a manner not pleasing to his betters, the tenth and eleventh verses of the fifty-fifth chapter of the same book, there Mr. Attorney would have a large field to display his skill, in the artful application of his innuendoes. The words are, "His watchmen are all blind, they are ignorant; yea, they are greedy dogs, that can never have enough." But to make them a libel, there is, according to Mr. Attorney's doctrine, no more wanting but the aid of his skill in the right adapting his innuendoes. As, for instance, "His watchmen (innuendo, the governor's council and assembly) are blind, they are ignorant (innuendo, will not see the dangerous designs of his excellency;) Yea, they (the governor and council meaning) are greedy dogs, which can never have enough (innuendo, enough of riches and power).

Such an instance as this seems only fit to be laughed at; but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to his excellency and his ministers, as some of the inferences and inuendoes in his information against my client. Then if Mr. Attorney is at

liberty to come into court, and file an information in the king's name, without leave, who is secure, whom he is pleased to prosecute as a libeller? And as the crown law is contended for in bad times, there is no remedy for the greatest oppression of this sort, even though the party prosecuted is acquitted with honor. And give me leave to say, as great men as any in Britain have boldly asserted, that the mode of prosecuting by information, when a grand jury will not find a bill of indictment, is a national grievance, and greatly inconsistent with that freedom, which the subjects of England enjoy in most other cases. But if we are so unhappy as not to be able to ward off this stroke of power directly, yet let us take care not to be cheated out of our liberties, by forms and appearances; let us always be sure that the charge in the information is made out clearly, even beyond a doubt; for though matters in the information may be called form, upon trial, yet they may be, and often have been found to be matters of substance upon giving judgment.

Gentlemen, the danger is great, in proportion to the mischief that may happen, through our too great credulity. A proper confidence in a court is commendable; but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the discretion of other persons. If you should be of opinion, that there is no falsehood in Mr. Zenger's papers, you will, nay (pardon me for the expression) you ought to say so; because you do not know whether others (I mean the court) may be of that opinion. It is your right to do so, and there is much

depending upon your resolution, as well as upon your integrity.

The loss of liberty, to a generous mind, is worse than death; and yet we know there have been those in all ages, who for the sake of preferment, or some imaginary honor, have freely lent a helping hand to oppress, nay to destroy their country. This brings to my mind that saying of the immortal Brutus, when he looked upon the creatures of Cæsar, who were very great men, but by no means good men. "You Romans," said Brutus, "if yet I may call you so, consider what you are doing; remember that you are assisting Cæsar to forge those very chains, which one day he will make yourselves wear." This is what every man, that values freedom, ought to consider: he should act by judgment, and not by affection or self-interest; for, where these prevail, no ties of either country or kindred are regarded; as, upon the other hand, the man who loves his country prefers its liberty to all other considerations, well knowing that without liberty, life is a misery.

A famous instance of this you will find in the history of another brave Roman of the same name, I mean Lucius Junius Brutus, whose story is well known, and therefore I shall mention no more of it, than only to show the value he put upon the freedom of his country. After this great man, with his fellow citizens whom he had engaged in the cause, had banished Tarquin the proud, the last king of Rome, from a throne which he ascended by inhuman murders, and possessed by the most dreadful tyranny and proscriptions; and had by this means amassed

incredible riches, even sufficient to bribe to his interest, many of the young nobility of Rome, to assist him in recovering the crown; but the plot being discovered, the principal conspirators were apprehended, among whom were two of the sons of Junius Brutus. It was absolutely necessary that some should be made examples of, to deter others from attempting the restoring of Tarquin and destroying the liberty of Rome. And to effect this it was, that Lucius Junius Brutus, one of the consuls of Rome, in the presence of the Roman people, sat as judge and condemned his own sons, as traitors to their country: and, to give the last proof of his exalted virtue, and his love of liberty, he with a firmness of mind, (only becoming so great a man) caused their heads to be struck off in his own presence; and when he observed, that his rigid virtue occasioned a sort of horror among the people, it is observed he only said, "My fellow citizens, do not think that this proceeds from any want of natural affection: no, the death of the sons of Brutus can affect Brutus only; but the loss of liberty will affect my country." Thus highly was liberty esteemed in those days, — that a father could sacrifice his sons to save his country! But why do I go to heathen Rome to bring instances of the love of liberty; the best blood in Britain has been shed in the cause of liberty; and the freedom we enjoy at this day may be said to be (in a great measure) owing to the glorious stand the famous Hamden, and other of our countrymen, made, against the arbitrary demands and illegal impositions of the times in which they lived; who, rather than give up

the rights of Englishmen, and submit to pay an illegal tax, of no more, I think, than three shillings, resolved to undergo, — and for the liberty of their country did undergo, the greatest extremities in that arbitrary and terrible court of star chamber, to whose arbitrary proceedings, (it being composed of the principal men of the realm, and calculated to support arbitrary government) no bounds or limits could be set; nor could any other hand remove the evil, but a parliament.

Power may justly be compared to a great river, which, while kept within its due bounds, is both beautiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed, it bears down all before it, and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition, the blood of the best men that ever lived.

I hope to be pardoned, sir, for my zeal upon this occasion; it is an old and wise caution, that when our neighbor's house is on fire, we ought to take care of our own. For, though, blessed be God, I live in a government where liberty is well understood, and freely enjoyed: yet experience has shown us all (I am sure it has to me) that a bad precedent in one goverment is soon set up for an authority in another; and therefore I cannot but think it mine, and every honest man's duty, that (while we pay all due obedi-

ence to men in authority) we ought at the same time to be upon our guard against power, wherever we apprehend that it may affect ourselves or our fellow subjects.

I am truly very unequal to such an undertaking on many accounts. And you see I labor under the weight of many years, and am borne down with great infirmities of body; yet, old and weak as I am, I should think it my duty if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations, set on foot by the government, to deprive a people of the right of remonstrating, (and complaining too) of the arbitrary attempts of men in power. Men who injure and oppress the people under their administration provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude; the question before the court and you, gentlemen of the jury, is not of small nor private concern, it is not the cause of a poor printer, nor of New York alone, which you are now trying: no! it may, in its consequences, affect every freeman that lives under a British government on the main of America. It is the best cause; it is the cause of liberty; and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery, will bless and honour you, as men who have baffled the attempts of tyranny; and by

an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that, to which nature and the laws of our country have given us a right, — the liberty — both of exposing and opposing arbitrary power, in these parts of the world, at least, by speaking and writing truth.

The address of Mr. Hamilton was listened to with intense interest by a crowded audience, and was received with every possible mark of favor. At the conclusion of it, the attorney general briefly replied; and the chief justice as briefly charged the jury to the effect, that, as the defendant had confessed the publication of the words complained of, the only question for the jury was, whether the words were libellous, and this, being a question of law, they might safely leave to the court.[1] The jury withdrew, and in a short time returned into court with a verdict of *not guilty*.

The verdict was received with shouts. The judges threatened the leader of the tumult with imprisonment; when a son of admiral Norris declared himself the leader, and invited a repetition of the huzzas. The judges had no time for a reply, for the shouts were instantly repeated, and Mr. Hamilton was conducted from the hall by the crowd to a splendid entertainment. The whole city renewed the compliment at his depart-

[1] The object of the court appears to have been to induce the jury to return a special verdict, that the defendant did publish the papers, and leave the question of libel, or not, to the court; but Hamilton had cautioned them not to do so, but to return a general verdict of not guilty.

ure the next day, and he entered the barge under a salute of cannon.[1] The common council of New York presented him the freedom of the city, "under a grateful sense of the remarkable service done by him to the city and colony, by his learned and generous[2] defence of the rights of mankind and the liberty of the press." A splendid gold box, in which to enclose the certificate of the freedom, was also purchased by subscription, on which the arms of the city were engraved, encircled with the words; "DEMERSÆ LEGES — TIMEFACTA LIBERTAS — HÆC TANDEM EMERGUNT:" in a flying garter within, "NON NUMMIS, VIRTUTE PARATUR:" and on the front, "ITA CUIQUE EVENIAT UT DE REPUBLICA MERUIT."

The argument of Mr. Hamilton, although open to criticism, as a legal production, must be regarded as a most able performance, under the circumstances of the case. The law was undoubtedly against him, but his exposition of its difficulties and absurdities was clear and able, while his address to the jury, and his whole management of the defence, were skilful, and well calculated to accomplish the object he had in view. But it was in a political point of view that this trial became of great importance. The political opinions so boldly promulgated by Mr. Hamilton within the jurisdiction of the most arbitrary governor in America, and before judges of his own creation, were eagerly responded to by the people of

[1] Dunlap's History of New York, ii. 301.

[2] Mr. Hamilton received no pecuniary compensation for his services in this trial.

the whole country. The result of the trial was proclaimed as a triumph of the people over arbitrary power, and gave a confidence to infant opinions, which caused it to be regarded as the morning star of American freedom. "But it was not one light alone that ushered in the dawn of our independence: the stars of a whole constellation sang together for joy."

The doctrines of Mr. Hamilton respecting the law of libel have frequently been agitated since his day, in England and America. In the former country, the doctrine as declared in the court of star chamber, about the beginning of the reign of James I., that the truth of a libel could not be shown by way of justification, because, whether true or false, it was equally dangerous to the public peace, remains to the present day unshaken.[1]

In this country, the subject has been frequently discussed, and with different results. In 1804, a famous case was argued before the supreme court of New York, and the court were equally divided in opinion on the point, whether, on an indictment for a libel, the defendant was entitled to give in evidence to the jury the truth of the charges contained in the libel.[2] In Massachusetts, the question came up

[1] Kent's Commentaries on American Law, ii, 18–23 (4th edition), where the cases on this subject are collected.

[2] This was the case of Harry Croswell, for a libel on Thomas Jefferson. It was argued with great ability by Alexander Hamilton, Harrison, and Van Ness for the defendant. Zenger's case is thus alluded to by them. "The decision in Zenger's case in the

in 1808, and it was decided, that the publication of a libel, maliciously, and with intent to defame, was clearly a public offence, whether the libel be true or not.[1] The same question was again agitated in 1825, with the same result.[2] In South Carolina, in 1811, it was decided by the court of appeals, that a libel could not be justified by proving its truth.[3] The same principle has been recognised in Louisiana;[4] and the weight of judicial authority undoubtedly is, that the English common law doctrine of libel is the common law doctrine in this country, in all cases in which it has not been expressly controlled by constitutional or legislative provisions.[5] But in several of the states, the matter is regulated by express statutes.

year 1735, was of no great authority. The times were then violent; no great research or temper were displayed on that occasion by the court, and the decision was reprobated by the public." The libel consisted in a publication, that "Jefferson paid Callender for calling Washington a traitor, a robber, and a perjurer; for calling Adams a hoary headed incendiary; and for most grossly slandering the private characters of those who he well knew were virtuous." Mr. Justice Kent delivered a learned and elaborate opinion, in which he held, that the defendant was entitled to give in evidence, upon the trial, the truth of the libel; and that the jury had a right to judge not only of the fact of the publication, but of the whole matter in issue. This trial caused great excitement at the time. It is reported in the appendix to the third volume of Johnson's cases, and was also published in a separate form.

The rights and duties of juries in such cases are fully and ably discussed by Mr. Baron Maseres, in his "Additional Papers concerning the Province of Quebec," (published in 1776,) ii, 395-425. Howell, xvii, 672, *note*.

[1] Commonwealth *v.* Chase, (4 Massachusetts Reports, 163.)

[2] Commonwealth *v.* Blanding, (3 Pickering's Reports, 304.)

[3] State *v.* Lehre, (2 Rep. Const. Court, 809.)

[4] Territory *v.* Nugent, (Christy's Digest, tit. Ev. No. 161.)

[5] Kent's Commentaries, ii, 20.

In Massachusetts, the defendant may give in evidence, in his defence upon the trial, the truth of the matter contained in the publication alleged to be libellous; but such evidence is not a sufficient justification, unless the matter alleged to be libellous is shown to have been published from good motives, and for justifiable ends.[1] In the constitutions of Pennsylvania, Delaware, Tennessee, Kentucky, Ohio, Indiana, and Illinois, it is declared, that in prosecutions for libels on men in respect to their public official conduct, the truth may be given in evidence, when the matter published is proper for public information.[2]

[1] Revised Statutes of Massachusetts, chapter 133, § 6.
[2] Kent's Commentaries, ii, 21.

TRIALS OF CERTAIN NEGROES AND OTHERS

BEFORE THE

SUPREME COURT OF NEW YORK,

FOR A CONSPIRACY TO BURN THE CITY AND MURDER THE INHABITANTS.

1741.

A "Journal of the Proceedings in the Detection of the Conspiracy, formed by some White People, in conjunction with Negro and other Slaves, for Burning the city of New York and Murdering the Inhabitants," in 1741, was published by Daniel Horsemanden, the recorder of the city, in 1744. It is a large book of more than two hundred pages, printed in double columns. The historian of this famous "Negro Plot" was the third justice of the supreme court at the time of the events which he records. He was a firm believer in the reality of the conspiracy, and takes great pains to vindicate the proceedings of the magistrates. His work appears to have been prepared with much care and labor, but it possesses little to interest the general reader, being for the most part a collection of evidence and abstracts of court records, thrown together without much system or proper arrangement. This supposed "plot," which threw the city of New York into a state of intense excitement and alarm, and resulted in the death of a large number of individuals, is not referred to in much detail by modern historical writers, although Mr. Dunlap, in the second volume of his history of New York, gives a somewhat extended account of it, abridged from Horsemanden's Journal. Mr. Bancroft disposes of it in a few words. "Once," he says, in speaking of the slaves, "an excitement against them raged in New York, through fear of a pretended plot, but the frenzy grew out of a delusion." By others, the subject is not mentioned at all.

THE NEW YORK NEGRO PLOT.

In the year 1741, the city of New York was thrown into the most intense excitement and alarm, by the rumor of a plot by the negro population to burn the city and massacre the inhabitants. The fear of such an event had some foundation in the fact, that negro slavery, at that day, was attended with difficulties and dangers, which, to a certain extent, have since ceased to exist. Most of the slaves were Africans by birth, who had been violently torn from their native land and reduced to servitude. Their spirits were not yet entirely subdued; and a race, which at this day is remarkable for implicit obedience and quiet submission, were, at the time alluded to, rude, boisterous and vicious, and had in their number many restless and daring spirits, whose influence was justly feared by the white population.

There had been frequent insurrections in different parts of the country. The Spanish government

made direct efforts to induce the slaves to revolt. Liberty and protection had been proclaimed to all fugitive negroes from the English by the governor of Florida, and he had actually formed a regiment from the negro refugees, appointing officers from among themselves, allowing them the same pay, and clothing them in the same uniform with the regular troops of Spain. In 1738, a serious revolt took place in South Carolina, and a large number of the insurgents suffered the last infliction of human power and vengeance.

The negroes in the largest commercial city of America were peculiarly exposed to the temptations of freedom. They became more intelligent than those in the interior, and their passions were inflamed by familiar intercourse with the lower orders of the white population. As early as 1712, there had been an insurrection of the slaves in New York, who fired a house and murdered several citizens before they were dispersed by the soldiers. Recollection of this, and a general distrust of the negro population, rendered the citizens of that city peculiarly suspicious of their movements, and when in 1741, the cry was raised of a NEGRO PLOT, there ensued a scene of confusion and alarm, of folly, frenzy and injustice, which scarcely has a parallel in this or any other country.

In February of that year, the house of a merchant, named Hogg, was robbed, and suspicions were entertained of John Hughson, who kept a low tavern where negroes were in the habit of resorting. This man had an indented servant, Mary Burton by name, about sixteen years of age, who gave information

against him, and he confessed that a part of the goods were brought to his house, which he delivered up to the magistrate. Peggy Carey, a woman of infamous character, was also implicated in the robbery and was committed to prison. Soon after these occurrences, the government house in the fort was discovered to be on fire, at midday, and was burnt, together with the king's chapel, the secretary's office, the barracks, and the stable. The fire was satisfactorily enough accounted for, but other fires occurring in quick succession, on different days, and some of them being undoubtedly the work of incendiaries, great alarm was excited.

It happened that a Spanish vessel, partly manned with negroes, had previously been brought into New York as a prize, and all the men had been condemned as slaves in the court of admiralty, and were sold at vendue; "now these men had the impudence to say, notwithstanding they were black, that they were freemen in their own country, and to grumble at their hard usage in being sold for slaves." One of them had been bought by the owner of a house in which fire was discovered, and a cry was raised among the people, "the Spanish negroes, the Spanish! take up the Spanish negroes!" They were immediately incarcerated, and a fire occurring in the afternoon of the same day, the rumor became general, that the slaves in a body were concerned in these wicked attempts to burn the city.

The military were turned out, and sentries were posted in every part of the city, while there was a general search of the houses, and an examination of

suspicious persons. The lieutenant governor, at the request of the city authorities, offered a reward of one hundred pounds and a full pardon to any free white person who should discover the persons concerned in these incendiary acts, and freedom with a reward of twenty pounds to any slave who should make the same discovery. The offer was tempting, and, at the ensuing session of the superior court, Mary Burton, the servant of Hughson, made a statement before the grand jury to the effect, that three negroes, Cæsar, Prince and Cuffee, were accustomed to meet at her master's, and had made a plan to burn the whole city and massacre the inhabitants. She had seen a large number of negroes at the same place, who were all in the conspiracy, and there were in her master's house a quantity of fire arms. The only white persons concerned were her master, his wife, and Peggy Carey. The former was to be king, and Cæsar was to be governor. At one of the meetings she heard Cuffee say, "that a great many people had too much, and others too little;" and he intimated that such an unequal state of things should not long continue.

When this statement was made known to the court, they immediately summoned all the lawyers in the city[1] to consult upon the measures most proper

[1] There were seven of them besides the attorney general, namely, Messrs. Murray, Alexander, Smith, Chambers, Nichols, Lodge, and Jamison. Messrs. Alexander and Smith, who had been excluded from the bar for their proceedings in Zenger's case (ante, p. 157,) appear to have been restored, and were most actively engaged in the prosecutions of the negroes and others, supposed to have been concerned in the "plot."

to be adopted in this emergency. By a law of the colony, negroes might be tried for any offence in a summary way; "but, as this was a plot in which white people were confederated with them, and most probably were the first movers and seducers of the slaves, there was reason to apprehend a deeper design than the slaves themselves were capable of; and it was judged most advisable that it should be taken under the care of the supreme court." Accordingly application was made to the lieutenant governor for an ordinance to enlarge the term of the supreme court; and the bar unanimously offered their assistance on every trial, in their turn, "as this was conceived to be a matter that not only affected the city, but the whole province."

Meanwhile the examinations and confessions were increasing every day. Peggy Carey, the wretched prostitute, being implicated, was examined by the judges in prison. She was promised pardon and reward if she would confess and expose the rest; but she said, "that if she should accuse any body of any such thing, she must accuse innocent persons, and wrong her own soul;" and she denied all knowledge of the fires. But upon being convicted as a receiver of stolen goods, she "seemed to think it high time to do something to recommend herself to mercy," and made a voluntary confession, in which she changed the scene of the plot from Hughson's to John Romme's, a shoemaker, and the keeper of a low tavern, where she said several negroes used to meet, to whom Romme administered an oath; and they were to attempt to burn the city, but if they

did not succeed, they were to steal all they could, and he was to carry them to a strange country and give them their liberty. All the slaves mentioned by her were immediately arrested. Romme absconded, but was afterwards taken in New Jersey.

On the twenty-ninth of May, 1741, the negro slaves, Quack and Cuffee, were brought to trial before the supreme court, on a charge of a conspiracy to murder the inhabitants of the city of New York. The principal evidence against them came from Mary Burton. There was also some evidence against them from negroes.[1] The prisoners had no counsel, while the attorney general, assisted by two members of the bar, appeared against them. The evidence had little consistency, and was extremely loose and general. The arguments of the lawyers were chiefly declamatory respecting the horrible plot, of the existence of which, however, no sufficient evidence was introduced. "The monstrous ingratitude of this black tribe," was the language of one of them, in addressing the jury, "is what exceedingly aggravates their guilt. Their slavery among us is generally softened with great indulgence. They live without care; and are commonly better clothed and fed, and put to less labor, than the poor of most christian countries. But notwithstanding all the kindness and tenderness with which they have been treated amongst us, yet this is the second attempt of the same kind, that this brutish and bloody species of mankind have

[1] By a law of the colony, the evidence of slaves was competent against each other. It was not allowed to be used against white men.

made within one age." The prisoners were immediately convicted, and were sentenced by one of the court, in a brutal address, which is singularly indicative of the general excitement on the subject, to be burnt to death. "You that were for destroying us without mercy," he said, "you abject wretches, the outcasts of the nations of the earth, are treated here with tenderness and humanity; and, I wish I could not say with too great indulgence, for you have grown wanton with excess of liberty, and your idleness has proved your ruin, having given you the opportunities of forming this villanous and detestable conspiracy. What hopes can you have of mercy in the other world, for shall not the judge of all the earth do right?" and he urged them to confess as affording the only hope of mercy.

The prisoners protested their innocence and utterly denied any knowledge of any plot whatever; but when they were taken out to execution, the poor creatures were much terrified; the officers again endeavored to persuade them to confess, and after they were chained to the stake, and the executioner was ready to apply the torch, they admitted all that was required of them. An attempt was then made to procure a reprieve, but a great multitude had assembled to witness the executions, and the excitement was so great, that it was considered impossible to return the prisoners to prison. They were accordingly burned at the stake. Although Hughson and his wife had already been tried, and were under sentence of death for the felony of receiving stolen goods, it was determined to bring them to another

trial for being concerned in the conspiracy. Accordingly on the fourth of June, 1741, Hughson, his wife, his daughter, and Peggy Carey, were placed at the bar for trial. Mary Burton was at hand with her tales, and Arthur Price, a thief and an infamous character, who had been employed by the magistrates to go to Sarah Hughson and endeavor to make her accuse her father and mother, related a conversation he pretended to have had with her. The prisoners had no counsel, and almost every member of the bar appeared against them. The attorney general made an address to the jury which was full of outrageous invectives against Hughson. "Such a monster," he said, "will this Hughson appear before you, that, for the sake of the plunder he expected by setting in flames the king's house, and this whole city, he, remorseless he! counselled and encouraged the committing of all these most astonishing deeds, of darkness, cruelty and inhumanity — infamous Hughson! Gentlemen, this is that Hughson, whose name and most detestable conspiracies will no doubt be had in everlasting remembrance, to his eternal reproach, and stand recorded to the latest posterity. This is the man! This, that grand incendiary! That arch rebel against God, his king, and his country! That devil incarnate, and chief agent of the Abaddon of the infernal pit and regions of darkness."[1]

The prisoners severally and solemnly protested their innocence, declared that what the witnesses had

[1] It should be kept in mind that these remarks are reported by one of the judges, who was a firm believer in the plot, and cannot be suspected of throwing ridicule upon the attorney general.

said against them was false, and called upon God to witness their asseverations. They were all found guilty, and were sentenced to be hanged. "Good God!" exclaimed the judge, in pronouncing sentence, "when I reflect on the disorders, confusion, desolation and havoc, which the effect of your most wicked, most detestable, and diabolical counsels might have produced, had not the hand of our great and good God interposed, it shocks me; and, you, who would have burnt and destroyed without mercy, ought to be served in a like manner."

The daughter of Hughson confessed, and was saved. Peggy Carey had confessed, but retracted, and said that what she had confessed was a gross prevarication, and that she had sworn falsely against those she accused. She was accordingly executed. On the evening before her death, she sent for one of the judges, and reiterated to him her statement that she had foresworn herself in regard to the plot. Hughson and his wife asserted their innocence to the last and were executed. When the three came to die, Hughson seemed to expect a rescue.[1] His wife was senseless, and Peggy Carey met her fate with less composure than either of the others.

[1] On the day previous to Hughson's trial, the recorder visited him in prison at his request. He entreated to be sworn, but it was refused, and he then averred that he knew nothing of any conspiracy, and called God to witness his assertion that he was innocent. It is surprising there were not even more confessions; but some who did confess were executed, and it required considerable wit to frame a confession sufficient to satisfy public credulity. If a prisoner did not tell some terrible thing, it was at once said that he kept back a part of the truth and his confession availed him nothing.

Meanwhile the trials were prosecuted with all possible vigor. On the eighth of June, six negroes were condemned to be chained to a stake and burned. On the tenth of June, four more negroes were tried, convicted, and subsequently received the same sentence. One of them immediately made a confession in court, implicating a large number of negroes. On the thirteenth of June, five more were convicted, and on the fifteenth of the same month, were sentenced to death. On the seventeenth of June, five of the Spanish negroes were brought to trial. By a law of the province, the testimony of slaves could only be used against each other, and it was used in the present instance; but the prisoners complained bitterly of the injustice done them, insisting that they were freemen in their own country. The court decided, however, that they were slaves, and the evidence of slaves was properly used against them. They were all condemned. On the nineteenth of June, the lieutenant governor offered a full pardon to all who would make confession before the first of July. The poor negroes, being extremely terrified, were anxious to take the only avenue of safety that was offered, and each strove to tell a story as ingenious and horrible as he could manufacture. "Now," says the historian of the plot, "many negroes began to squeak, in order to lay hold of the benefit of the proclamation. Some who had been apprehended, but not indicted, and many who had been indicted and arraigned, who had pleaded not guilty, were disposed to retract their pleas and plead guilty, and throw

themselves on the mercy of the court."[1] In one week after the proclamation, there were thirty additional slaves accused, and before the fifteenth of July, forty-six negroes, on their arraignment at different times, pleaded guilty. Suspected slaves were daily arrested, until at length the prison became so full that there was danger of disease, and the court again called in the assistance of the members of the bar, who agreed to bear their respective shares in the fatigue of the several prosecutions.

The terrible cry of POPERY was now raised, which struck terror to the hearts of all, and led to the sacrifice of an amiable and interesting clergyman, of whose innocence there can scarcely remain a doubt, so absurd was the charge against him, and so feebly was it supported. As his trial is indicative of the state of feeling at the time, it will be given somewhat in detail.

TRIAL OF JOHN URY.

John Ury, the son of a former secretary of the South Sea Company, was a non-juring clergyman, and a man of education. He came to New York for the purpose of teaching a school. When he was arrested, he denied all knowledge of any plot or even of the witnesses who testified against him; but Mary Burton, and William Kane, a soldier who had himself been accused and escaped by confession, testified positively, that Ury was in the habit of meeting the negroes at Hughson's, and he was committed to

[1] Horsemanden's Journal, 107.

prison. His trial took place on the twenty-ninth of July, 1741, before the supreme court. He was charged with having counselled, abetted, and procured a negro slave, named Quack, to set fire to the king's house in the fort. A second indictment charged, that being a priest, made by the authority of the pretended see of Rome, he came into the province and city of New York after the time limited by a law against jesuits and popish priests.[1] He pleaded not guilty, and prayed a copy of the indictments, but a copy of the second only was granted to him. He had no counsel, while there were arrayed against him the attorney general and four eminent lawyers of the New York bar.

Attorney general Bradley opened the case on the part of the prosecution as follows: In order to maintain the charge against the prisoner upon this indictment, we shall prove to you, that the prisoner was actually concerned in the plot to burn the king's house, and this city, and murder the inhabitants; that he has frequently been at Hughson's house, in company with Hughson, his wife, and daughter, and Kerry, and with divers negroes, talking with them about the plot, counselling and encouraging them to burn the king's house, and the town, and to kill the inhabitants; that he advised them what would be the fittest time to set the English church on fire;

[1] By this law, passed in the eleventh year of William III., it was provided, that any priest of the church of Rome, who should come into the province after November, 1700, should suffer perpetual imprisonment, and if any person so sentenced should break prison, and be afterward retaken, he should suffer death.

and that the prisoner, as a popish priest, baptized Hughson, his wife, and daughter, and Kerry, and also divers negroes, and told them that he could forgive sins, and that he forgave them their sins relating to the plot. When he was with the negroes at Hughson's house, he used to make a round ring on the floor with chalk, or some other thing, and stand in the middle of it with a cross in his hand, and swear the negroes into the plot; and that they should not discover either the plot, or him, or any other person concerned in it, though they were to die for it. We shall likewise produce to you a letter from general Oglethorpe, to his honor our governor, whereby it appears, that some time before the plot broke out here, the Spaniards had employed emissaries to burn all the magazines and considerable towns in the English North America: and that many priests were employed, under pretended appellations of physicians, dancing masters, and such like occupations; and, under such pretences to get admittance into, and confidence in, families.

Gentlemen, what I have alleged, and much more, you will hear fully proved against the prisoner by the witnesses for the king, on this trial: but before we enter upon their examination, give me leave to say a few words concerning the heinousness of this prisoner's offences, and of the popish religion in general; which I shall speak but very briefly to, as there are several other gentlemen of counsel for the king on this trial, and as I have not had either health or leisure to prepare to say much on this occasion.

Gentlemen, the late dreadful conspiracy to burn

the king's house, and this whole town, and to kill the inhabitants, which the prisoner, as well as Hughson, advised and encouraged, and swore many the conspirators to join and bear their parts in, are crimes of too black and inhuman a nature to need any aggravation; and, no doubt, the prisoner's engaging, at the peril of his own life, in so destructive, so bloody, and dangerous an enterprise, proceeded from his being employed in it by other popish priests and emissaries, and his zeal for that murderous religion: for the popish religion is such, that they hold it not only lawful but meritorious, to kill and destroy all that differ in opinion from them, if it may any ways serve the interest of their detestable religion; the whole scheme of which seems to be a restless endeavor to extirpate all other religions whatsoever, but more especially the protestant religion, which they maliciously call the northern heresy. To attain this wicked end, their first trick is, by subtle arguments to persuade the laity out of their senses, by showing them a seeming necessity for their believing as their church believes, if they tender their own salvation; and this, with many more frauds, the church of Rome has artfully devised to get an absolute dominion over the consciences, that they may the more easily pick the pockets of credulous people: witness the pretended pardons and indulgences of that crafty and deceitful church, and their masses to pray souls out of purgatory, which they quote (or rather wrest) scripture for, when no such thing is to be found there; but is a mere invention and cheat of their own to gull the laity of their money.

Then they have their doctrine of transubstantiation, which is so big with absurdities, that it is shocking to the common sense and reason of mankind; for were that doctrine true, their priests, by a few words of their mouths, can make a god as often as they please; but then they eat him too; and this they have the impudence to call honoring and adoring of him. Blasphemous wretches! For hereby they endeavor to exalt themselves above God himself, inasmuch as the creator must necessarily be greater than his creature.

These and many other juggling tricks they have in their hocus pocus, bloody religion; which have been stripped of all their wretched disguise, and fully exposed in their own colors by many eminent divines, but more particularly by the great Dr. Tillotson, whose extraordinary endowments of mind, his inimitable works, and exemplary piety and charity, have gained him such universal esteem and applause throughout all the protestant world, as, no doubt, will endure as long as the protestant name and religion lasts, which I hope will be to the end of time.

Gentlemen, when you have heard the witnesses prove what I have alleged against the prisoner, I make no doubt but you will, for your oath's sake, and for your own country's peace and future safety, find him guilty.

Mary Burton was then called and sworn.

Chambers — of counsel for the king. — Mary, give the court and jury an account of what you know concerning this conspiracy, to burn down the town, and murder and destroy the inhabitants; and what

part you know the prisoner at the bar acted in it: tell the whole story from the beginning, in your own method, but speak slow, not so hastily as you usually do, that the court and jury may the better understand you.

Mary Burton. I have seen Ury very often at Hughson's, about christmas and new year, and then he staid away about a fortnight or three weeks, and returned again about the time that Hogg's goods came to our house. I have often seen him in company with Hughson, his wife, and daughter, Peggy, and several negroes, talking about the plot, burning the fort first, then the fly, and then the dock: and upon some of the negroes saying, they were afraid of being damned for being concerned in the plot, I heard Ury tell them they need not fear doing it, for that he could forgive them their sins as well as God Almighty, and would forgive them. They were to burn the whole town and to kill the people; Ury was to be captain of a company of negroes, and he was to begin the fire where he lodged; once when they were together above stairs, Ury, Hughson, his wife, and Peggy, they called Mary, and I went up; but when I came up stairs, Ury had a book in his hand, and bade me go away, and asked me what business I had there, and said, they did not call me, they called Mary Hughson; he was angry, and shut the door to again; I looked under it; and there was a black ring upon the floor, and things in it, that seemed to look like rats, I don't know what they were. Another time I heard him talking with the negroes, Quack and others, about the plot; and he

turned the negroes out of the room, and asked me to swear? I said I would swear, if they would tell me what I was going to swear; but they would have me swear first; Hughson and his wife went and fetched silks and gold rings, and offered them to me, in case I would swear; but I would not, and they said, I was a fool; Ury then told me, he could forgive sins as well as God; I answered, I thought that was out of his power. One night, some time about new year, I was listening at the door of the room upon the stairs, where were Ury, Hughson, his wife and daughter Sarah, Cæsar, Prince, Cuff, and other negroes; I looked through the door, and saw upon the table a black thing like a child, when Ury had a book in his hand, and was reading, but I did not understand the language; and having a spoon in my hand, I happened to let it drop upon the floor; Ury came out of the room, running after me down stairs; he fell into a tub of water, which stood at the foot of the stairs, and I ran away. When they were doing any thing extraordinary at nights, they would send me to bed.

Prisoner. You say, you have seen me several times at Hughson's, what clothes did I usually wear?

Mary Burton. I cannot tell what clothes you wore particularly.

"That is strange, and know me so well."

"I have seen you in several clothes, but you chiefly wore a riding coat, and often a brown coat, trimmed with black."

"I never wore any such coat. What time of the day did I usually come to Hughson's?"

"You used chiefly to come in the night time, and when I have been going to bed; I have seen you undressing in Peggy's room, as if you were to lie there; but I cannot say that you did, for you were always gone before I was up in the morning."

"What room was I in when I called Mary, and you came up, as you said?"

"In the great room up stairs."

"What answer did the negroes make, when I offered to forgive them their sins, as you said?"

"I don't remember."

William Kane.[1] I know the prisoner very well, I have seen him at Croker's, at Coffin's, and Hughson's, and particularly with Daniel Fagen, Jerry Corker, and one Plummer, and several negroes, at Hughson's. Jerry Corker was one of the first that brought me into the plot. One day before christmas last, I was standing sentry at the governor's door, and Jerry Corker coming out, I being dry, asked him for beer; Jerry said he would get some; that he had rum in his pocket, and would make flip; and then he went in and made it in a copper pot, and told me it was with loaf sugar; I drank a draught of it; and when I was relieved at night, Corker came into the guard room, and asked me if I would go to Croker's at the Fighting Cocks, where there was to be a christening by a Romish priest; we went thither, and staid till past ten o'clock, but the people did not come that night. The next night, Corker and I went

[1] This witness, a soldier, had been accused of being one of the conspirators. He denied it at first, but subsequently confessed, and was saved.

there again, but the people were not there. The third night we went to New street, to the house of one Coffin, a pedlar; there they had a child, and Ury christened it, and read Latin. Three acted as priests, and handed the book about. Ury put salt in the child's mouth, sprinkled it thrice, and crossed it. Ury and Corker there endeavored to persuade me to be a Roman catholic; Ury said, 't was best to be a Roman, they could forgive sins for any thing ever so bad. I told him, I did not believe him; and Corker told me that Ury and all priests could forgive sins. Ury was present at Hughson's when John Hughson swore me and his father, and brothers, into the plot; there was Quack, and forty or fifty negroes there at the same time; we were to burn the town, and destroy the people. David Johnson was there, and Ury tipped him on the shoulder, and they went into a room together, and staid a quarter of an hour; and when they came back, Johnson said "we will burn the Dutch, and get their money;" by Ury's persuasions that he could forgive sins, many were brought in to be concerned. Ury was near me when I was sworn, and the Hughsons, and I took him to be one of the head; Ury wanted to christen me, but I would not suffer him, and he would not speak to me, nor before me, for a long time; for he could not abide me, because I refused to become a Roman, till after he knew that I was concerned in the plot, and even then he did not much care for me. Ury was by, when Hughson swore eight negroes into the plot in a ring; and it was then talked among them, of burning the fort; and Quack, who was present, was at

that time pitched upon to do it, in the presence of Ury, who might, and probably did hear it. Jerry Corker told me, that the English church was intended to be burnt on christmas day last; but Ury put it off, and said, that when the weather was better, then there would be a fuller congregation.

Prisoner. You say you have seen me very often, you saw me at Coffin's, you saw me several times at Hughson's, pray what clothes did you see me in?

Kane. I have seen you in black, I have seen you in a yellowish great coat, and sometimes in a straight-bodied coat, of much the same color.

"What time of the day have you seen me at Hughson's, and what did I say to you?"

"I have seen you there chiefly at night, and you told me, you could forgive me my sins, and there would be no fear of damnation, and you wanted to christen me."

"You say you saw me christen a child in New street; how was the child dressed, and what ceremony did I use, and who was present there then?"

"The child was not naked, it was dressed as usual; and you put it on your left arm, and sprinkled it with water three times, and put salt in its mouth, and crossed it, as I said before; there were about nine persons present."

"Did I use any thing besides salt and water?"

"Not that I saw."

"Who were present at the christening?"

"Eight or nine persons, I think; there was Jerry Corker, Daniel Fagen, Coffin, you, the mother of the child, myself, and two or three more."

"You say you saw me at Hughson's several times, what room was I usually in?"

"Sometimes in one room, and sometimes in another."

"At what times was I there?"

"At nights."

"What habit have you seen me wear?"

"A black coat, a yellowish surtout, and sometimes a light-colored, close-bodied cape coat."

"What did I offer in order to induce you to become a Roman catholic?"

"Forgiveness of all my sins past, and what I should do in this case; and I said to you, what a fine thing it is to be of such a religion, when a priest can forgive sins, and send one to heaven."

Sarah Hughson.[1] I know the prisoner, and have often seen him at my father's, late in last fall chiefly; I have seen him there at night, in company with negroes, when they have been talking of burning the town, and killing the white people. I have seen him make a ring with chalk on the floor, which he made the negroes stand round, and put their left foot in, and he swore them with a cross in his hand, to burn and destroy the town, and to cut their masters' and mistresses throats. He swore Bastian, Cæsar, Prince, and Quack; he swore them to keep secret, and not to discover him or any body else, if they were to die for it. I have heard Ury, and the negroes, talk of

[1] This witness had been convicted and sentenced to death for being concerned in the conspiracy. After repeated efforts had been made to induce her to confess, she at length did so, and was pardoned.

burning the fort; and he said, if that did not do, they were to begin at the east end of the town, with a strong easterly wind, and that would go through the whole town. He asked me to swear to the plot, and said, that I should have all my sins forgiven, if I kept all secret; and he swore me on an English book, and my parents and Peggy were by; he swore Peggy too; I heard him tell her, that all the sins which she had committed should be forgiven her; and he told her, that priests could forgive sins as well as God, if they would follow their directions. He used to christen negroes there; he christened Cæsar, Quack, and other negroes, crossed them on the face, had water and other things; and he told them, he would absolve them from all their sins.

Prisoner. How did I swear you?

Sarah Hughson. On a book: I believe it was an English book.

"Who was present when I swore you?"

"My parents, Peggy, Kane, and others."

"You say I baptized several people, pray what ceremony did I use at baptizing?"

"When you baptized the negroes, you made a cross upon their faces, and sprinkled water, and you used something else, but I cannot tell what; and you talked in a language which I did not understand."

"Whom did I baptize?"

"Cæsar, Prince, Bastian, Quack, Cuffee, and several other negroes."

The counsel for the king then introduced a letter from General Oglethorpe, of Georgia, to the lieuten-

ant governor of New York, to show a probability that the prisoner was an emissary of Spain. The statement in the letter was, that a Spanish prisoner taken in an engagement near Augustine, had given intelligence that the Spaniards had employed emissaries to burn all the magazines and considerable towns in North America, thereby to prevent the subsistence of the English fleet in the West Indies; and that, for this purpose, many priests were employed who pretended to be physicians, dancing masters, and instructers, and under these pretences were to endeavor to gain admittance and confidence in private families. After this letter was read, the counsel for the king said they had no more evidence.

The prisoner, who was obliged to conduct his own defence, being then asked if he had any witnesses, made a few remarks and requested that Mr. Croker and other witnesses with whom he was acquainted, might be called and sworn.

Prisoner. As I have lodged at your house for some time, you can best give an account of my manner of life and conversation; and pray first inform the king's judges and the jury, if you ever saw any negroes come after me.

Croker. No, I never saw any negroes come after you.

Prisoner. Pray give an account of what you know of me.

Croker. Mr. Ury came to my house the summer before last, and staid a week; he then returned to Burlington, and came back last November, and said, he was going further; but I prevailed upon him to

stay, to teach my son Latin, for which I was to give him his lodging and diet. Some time ago he went to Staten Island, and preached there, and said he was paid for it. He lodged at my house from November till a little before Campbell took Hughson's house; and while he was with me, he kept pretty good hours; sometimes he came home by eight, or nine, or ten o'clock, and sometimes staid out till eleven or twelve at night. He once went to Brunswick this spring, before the fort was burnt, as I heard, or else I do not know that he lay out of my house. Once talking of negroes, I heard him say, he did not think them proper objects of salvation. He used to go up stairs sometimes, light a candle in the day time, and lock himself up in a room alone.

Attorney General. Pray, Mr. Croker, was you in town all the time he lodged at your house?

Croker. No, I have been out for a day or so.

"Pray, Mr. Croker, what hours did the prisoner usually come home at?"

"Sometimes sooner and sometimes later: I have known him stay out sometimes till eleven or twelve o'clock, once or twice later; I asked him why he staid so late, and where he had been? he commonly told me he had been at Mr. Webb's; and sometimes at some other private houses."

"When did Ury come to lodge at your house, and when did he leave it?

"He came to my house in November last, and left it a little before Campbell went to live at Hughson's house."

"Have you ever heard him preach?"

"Yes, once, and he then said, he was to preach again the next Sunday; and in his prayer before sermon, he prayed for his majesty king George, and all the royal family."

Joseph Webb. I have known Mr. Ury since November last; I was then at work at John Croker's, at the Fighting Cocks, and hearing him reading Latin and English, and thinking he read well, I inquired of Croker who he was? He told me he was a schoolmaster lately come from Philadelphia; and from this I became acquainted with him, and asked him if he would teach a child of mine; he said he would, if Croker would give him the liberty of coming to his house, which Croker agreed to, and I sent my child to him, and he taught him Latin. After this I recommended him to Colonel Beekman, to teach his daughter to write and cipher; and growing more intimate with him, I observed the poor and mean appearance in his habit, and I thought his pocket might be answerable to it; I gave him an invitation to my house, and told him he should be welcome at my table noon and night, at any time, when he saw proper; he frequently came to my house accordingly, all the winter after. He used often to stay at my house late in discoursing, sometimes on one subject, sometimes on another, and has staid there, now and then, till eleven or twelve at night, and I have often gone home with him to his lodging at those hours. Mr. Ury told me he was a non-juring minister; having asked him, who ordained him, he answered me, the senior non-juror in England: I have heard him preach, and have heard him say, such a day was his sacrament day, and he must be at sacrament.

Attorney General. Did he say he must take the sacrament, or be at the sacrament, or administer the sacrament?

Webb. I cannot be sure, but I remember he said, it was his sacrament day.

"Was it Sundays or working days he said were his sacrament days?"

"I cannot be sure, but I think I have heard him name both."

"Do you know any thing of his buying of wafers, or going to a confectioner's?"

"He asked me for a confectioner's shop, and I showed him Mr. De Brosse's, where he went along with me; and after he asked for several sorts of sweet meats, he asked for wafers; which being shown to him, he asked Mr. De Brosse if he made wafers for the Lutheran minister, and he was told he did, but I do not remember that he bought any of them: I have heard him pray and preach several times, but don't remember that ever I heard him pray for king George, but in general terms for the king. I am by trade a carpenter, and Ury applied to me to make him up something in Hughson's house, which I have heard since called an altar. Ury gave me directions for making it, and said, it was a place to lay books on to read, or to put a candle or a bottle and glass on, or other such like common uses; it was two pieces of board, which formed a triangle, and was raised against the wall, at the bottom of which was a shelf; on each side there was a place to hold a candle."

"Do you think if a man wanted a shelf or other

place to lay a book on to read, or set a bottle or glass on, he would make it in that form?"

"I can't say; people may have odd humors, but I should not."

"When you made it, what did you take it for?"

"I can't say; I followed his directions."

"Do you know any thing of Ury's being imprisoned in England?"

"Ury did tell me that he was imprisoned in England; he said he wrote a book there, and that the critics laid hold of it, picked a hole in it and construed it treason; but if it was, he said, it was contrary to his intentions."

"Mr. Webb, in your conversations together, what have you heard him say about negroes?"

"We were one day talking about negroes, and I said, I thought they had souls to be saved or lost as well as other people; Ury said, he thought they were not proper objects of salvation; I replied, what would you do with them, would you damn them all? No, says he, leave them to that Great Being that has made them, he knows best what to do with them; says he, they are of a slavish nature, it is the nature of them to be slaves, give them learning, do them all the good you can, and put them beyond the condition of slaves, and in return, they will cut your throats."

John Campbell and Ann Campbell, his wife, were then called and sworn.

Prisoner. Mr. Campbell, did you ever see me at Hughson's house before I went there with you, and what passed there?

John Campbell. I never saw him there till I went to take possession of the house at May day last, and then as we were going there together, he said, he did not know the way thither; and when we came down, he took Gerardus Comfort's house for it; as for any thing else, I know nothing more of him, for I took him for a grave, sober, honest man.

Prisoner. Mrs. Campbell, will you please to give an account of what you know of me, and what passed between Sarah Hughson and me, when we went to take possession of the house.

Ann Campbell. I went with my husband and Mr. Ury, on May day last, to Hughson's to take possession of the house; and when we came there, Sarah Hughson, the daughter, was in possession. We told her she must go out of the house; for that my husband had taken it: whereupon Sarah Hughson swore and cursed at me; and Mr. Ury said to her, "how dare you talk so impertinently and saucily to an old woman, you impudent hussy? go out of the house, or I'll turn you out:" Sarah then swore miserably, and said, "you have a house now, but shall not have one long." I have often heard him pray and sing psalms; and he prayed by a sick woman. I never saw any harm by him; my husband and he were to keep school together.

Court. Will you ask them any more questions?

Prisoner. No, sir, I have nothing more.

Attorney General. If your honors please, as the prisoner has been now endeavoring to prove he is not a Romish priest, and has already insisted on it as a part of his defence; I shall beg leave to examine a witness to that point.

Court. Call him then, Mr. Attorney.

Joseph Hildreth, schoolmaster, was then called and sworn.

Attorney General. Mr. Hildreth, will you give an account of what you know of the prisoner, how you became acquainted with him, and what has passed between him and you in conversation from time to time.

Hildreth.[1] The way I came to hear of, or know this Mr. Ury, was, that last winter some time in February, I happened to be in company with a friend at Mr. Croker's, and Mr. Webb, joiner, called me aside, asked me what school I had; and if I would incline to take a partner, one very well versed in the English, Latin and Greek tongues? I answered him, what school I had I could very well manage myself; I had no inclination for a partner at all. He said he was a good sober sort of a man, and understood his business very well, and if we could agree, he did not doubt but it would do very well. I answered him, I inclined to be master of my own school alone, though it was not so large as if I had a partner. He, seeing I had no inclination for him, did not tell me who he was. Some time after, about seven or eight weeks, I had a little business on board captain Griffith's, where I met with him and Webb in company, which was the first time I ever spoke to him; then, after our salutation of each other, he began to ask me some questions concerning my school and

[1] This witness, apparently a rival schoolmaster, had his evidence committed to writing.

method of teaching; after which we stepped in at Baker's, and took a serious glass together; at which time he took a small book out of his pocket, (English and Latin) and construed (I think) the 117th Psalm; then laying the book on the table, I took it up, and was going to look on the title page, but he directly seized it out of my hands, and told me I must not look into it, and put it in his pocket.

Another time, at my school, I had some discourse with him concerning Mr. Whitefield's letter in answer to Mr. Wesley's sermon on free grace; which letter he did not approve of at all, and told me, he believed it was through the great encouragement the negroes had received from Mr. Whitefield, we had all this disturbance; and that he believed Mr. Whitefield was more of a Roman than any thing else; and he believed he came abroad with no good design. Then I asked him what was the signification of a non-juror, as I understood he pretended to be? And he answered, those that would not take the oaths of allegiance, as he did not. I asked him why? Says he, "can you swear one to be a bastard?" "No." "No more can they say king James was one; and the difference between us non-jurors and others is this: we, in the prayer for the king and royal family, mention no names, as they do." I asked him if they prayed for the pretender? he said, for him, let him be who he will, that was the king; he mentioned no names.

At another time, he said, "you talk so much against popery, I believe though you speak so much against it, you will find you have (or I think will

have) a pope in your belly; for," says he, "the absolution of the church of Rome is not half so bad as that of the church of England at the visitation of the sick." "But," says I, "I don't approve of their confessing to priests." Says I, "there is a deal of wickedness and deceit in it." Says he, "no, no; for when any person makes confessions, the priest does not know who they be; for he does not so much as see them, but only hears and absolves them." "Then," says I, "I was mistaken." "Oh!" says he, "they speak against the church of Rome, but don't know them; their priests are the most learned of men; the articles of the church of England were made in distracted times." And I observed several times he said, "we priests." Says he, "your Roman priests will make you believe, and prove by the plain rules of grammar, that black is white, and white black, and that the wafer and wine is the real body and blood of Christ."

We were often in company; but the best part of our discourse was upon salvation by faith alone, which he would not allow, nor predestination; and he told me, he really believed the moon to be an inhabited planet, and all the stars were inhabited; or else, says he, I would not repeat that part of the Nicene creed, "begotten of his Father before all worlds;" and, says he, many texts of scripture confirm it to be so.

I was several times since in his company, but do not remember any thing in particular relating to priests; but the last time I had any thing of discourse was about two days before I heard him preach, and then in his room; seeing the altar placed

in the corner, I asked him what use that was for? first, he said, only to lay books on, or for a candle to sit and read by; but I told him I could not think it, for I supposed it for the sacrament by its form and odd color; I begged him to let me know what it was; so after some time he seriously told me, it was for the sacrament; and he told me, I think, every saint's day it was exposed, only covered with a piece of white linen; and that he administered on some proper days; and he told me, they received the wafer instead of bread, and white instead of red wine. I asked, why the wafer? Because, says he, the wafer is more pure; and no bread he thought pure enough to represent the body of our Lord; then going to his small box, says he, I'll get a piece and you shall taste it if you will; and he brought me a piece, and I took and eat it.

I think he told me, that some time before he had baptized a child in the house, but they used more ceremonies than we; and he talked as if they anointed and washed one another's feet. He told me further, that at the time of the celebration, or at what time the sacrament was exposed, they had lighted candles burning to represent our Savior as the light of the world. And when I came in to hear him preach, I accordingly saw it as he told me; for he told me before, that if I came on Sunday evening to hear him, I could see it; for the sacrament was on the altar covered with a white linen cloth, and there were three candles burning; but not a minute after I came in, he put out the candles, and put his sacrament in his box, and locked them up.

The prisoner addressed the court and jury at considerable length, and with much ability. He did not venture to deny, that there had been a conspiracy, but pointed out the absurdity of supposing that he was concerned in it. Could any one believe, that he would have remained in the city so long after the discovery of the plot if he were guilty; especially as he had been warned many days previous to his arrest, that he was regarded with jealousy, there being suspicions that he was a priest? He averred that the suspicion of his being a priest was the cause of his being accused; but was it probable that the principal actors in this plot would entrust it to men of learning like priests, or that the latter would become the associates of slaves in such a nefarious design as that of which he was accused? In regard to the positive testimony of the witnesses, he contended that they were not entitled to belief. If he was at the bottom of this plot, or the chief actor in it, why had they not before proclaimed it? Why had they maintained silence for several months until a large number had actually been hanged? His name had never been whispered by the informers until very recently; their evidence was evidently made up to suit the popular cry against popery. Besides all this, he formerly had a difficulty with Sarah Hughson, one of the witnesses, in consequence of his reproving her for bad language, and she had threatened his life. Was her evidence, under these circumstances, to be used against him?

In regard to the second indictment, that he was a Romish priest, he insisted that there was no evidence

of it whatever; and he went into a particular examination of the evidence upon that point, concluding as follows: "Gentlemen, the mistake the major part of the world lies under is, their apprehending that a non-juring priest must be a popish priest; whereas there are no truer protestants, for they are far from having any regard to a pretender, or for setting on the throne a popish prince to be the head of a protestant church. The doctrine they assert and stand by is non-resistance and passive obedience, which is now as vigorously maintained as ever it was in any reign. And I believe there is no non-juror, either clergy or laity, but would show themselves such true subjects to the present king George, as to take the oaths of allegiance and supremacy. I have now no more to say, but hope and pray, that what has been offered will be considered with minds unprejudiced, minds prepossessed with no opinions, with minds in a diligent search after truth. You being gentlemen, I hope, fearing God, reverencing conscience, hating partiality, lovers of truth and innocency, and having a tender regard to life."[1]

The counsel for the king then made a long and excited speech against the prisoner, much of which consisted of invectives against the Roman Catholic religion in general: "The monstrous wickedness of

[1] Horsemanden is unwilling to admit that Ury was a man of education, and in proof of it, he prints his speech from the original draft without punctuation. The historian admits that the prisoner, when he delivered up the paper, apologized that it was written without "stops or pointing;" and adds, "those who were somewhat acquainted with the man were of opinion, he was not very capable of making them."

this plot," he exclaimed, "would probably among strangers impeach its credit; but if it be considered as the contrivance of the public enemy, and the inhuman dictate of a bloody religion, the wonder ceases. What more cruel and unnatural can be conceived, than what Rome has contrived; yea, what more savage and barbarous, than what popery has attempted, and sometimes executed, for the extirpation of that which the papists call heresy? We need not go so far from home as the valleys of Piedmont, nor rake into the ashes of the Waldenses and Albigenses, for tragical instances of popish cruelty. We need not remind you of the massacre at Paris, nor the later desolations in France, nor mention the horrible slaughters of the duke d'Alva in the low countries. We need not recount the many millions of lives, that in remote countries, and different ages, have been sacrificed to the Roman idol; nor measure out to you, that ocean of foreign blood with which the scarlet whore hath made herself perpetually drunk. No, gentlemen, the histories of our native country will give us a formidable idea of popery; and inform us of the detestable principles of that religion; witness the blood of our own martyrs, who perished in prisons and at the stake, without beginning higher than my lord Cobham, and recounting their number down to the end of queen Mary's reign. Witness that execrable design to blow up king, lords, and commons, in the gunpowder treason, contrived by the papists; that intestine fire that broke out in the late unnatural civil war, the coals whereof were blown up by them; the bloody massacre of many thousands of protestants by the Irish

papists, about the same time; the restless spirit of that party, which has broke out in plots in almost every reign since the reformation; the arbitrary and illegal measures that preceded the glorious revolution; and the unnatural rebellion within our memory. These are all evidences of the destructive tendency of that bloody religion, which, in order to promote its interests, never boggles at the vilest means, can sanctify the most execrable villanies; and, to encourage its votaries, will cannonize for saints a Guy Faux and others, some of the greatest monsters of iniquity that ever trod upon the face of the earth!"

The jury were out but fifteen minutes and found the prisoner guilty. When he was asked whether he had any thing to say in arrest of judgment, or why sentence of death should not be passed upon him, he answered that he had nothing to say, but requested as much time as could be allowed him to settle his private affairs. He was executed on Saturday, the twenty-ninth of August, 1741. Arrived at the place of execution, he addressed the crowd from the gallows, immediately before he suffered, as follows:

Fellow christians, I am now about to suffer a death, attended with ignominy and pain; but it is the cup that my heavenly father has put into my hand, and I drink it with pleasure; it is the cross of my dear redeemer, I bear it with alacrity, knowing that all that live godly in Christ Jesus, must suffer persecution; and we must be made in some degree partakers of his sufferings, before we can share in the glories

of his resurrection; for he went not up to glory before he ascended mount Calvary; he did not wear the crown of glory before the crown of thorns. I am to appear before an awful and tremendous God, a being of infinite purity and unerring justice; a God who by no means will clear the guilty, that cannot be reconciled either to sin or sinners; in the presence of that God, the possessor of heaven and earth, I lift up my hands, and solemnly protest, I am innocent of what is laid to my charge. I appeal to the great God for my non-knowledge of Hughson, his wife, or the creature that was hanged with them. I never saw them living, dying, or dead; nor ever had I any knowledge or confederacy with white or black, as to any plot: and, upon the memorials of the body and blood of my dearest Lord, in the creatures of bread and wine, in which I have commemorated the love of my dying Lord, I protest that the witnessess are perjured; I never knew them but at my trial. But for a removal of all scruples that may arise after my death, I shall give my thoughts on some points.

First, I firmly believe and attest, that it is not in the power of man to forgive sin; that it is the prerogative only of the great God to dispense pardon for sin; and that those who dare pretend to such a power, do in some degree commit that great and unpardonable sin, the sin against the holy spirit; because they pretend to that power which their own consciences proclaim to be a lie.

Again, I solemnly attest and believe, that a person having committed crimes that have or might

have proved hurtful or destructive to the peace of society, and does not discover the whole scheme, and all the persons concerned with him, cannot obtain pardon from God. And it is not the taking any oath or oaths that ought to hinder him from confessing his guilt, and all that he knows about it; for such obligations are not only sinful, but unpardonable, if not broken. Now a person firmly believing this, and knowing that an eternal state of happiness or misery depends upon the performance or non-performance of the abovementioned things, cannot, will not trifle with such important affairs.

I have no more to say by way of clearing my innocency, knowing that to a true, christian, unprejudiced mind, I must appear guiltless; but, however, I am not very solicitous about it. I rejoice, and it is now my comfort (and that will support me and protect me from the crowd of evil spirits that I must meet with in my flight to the region of bliss assigned me) that my conscience speaks peace to me. Indeed, it may be shocking to some serious christians, that the holy God should suffer innocency to be slain by the hands of cruel and bloody persons (I mean the witnesses who swore against me at my trial,) indeed, there may be reasons assigned for it, but as they may be liable to objections, I decline them; and shall only say, that this is one of the dark providences of the great God, in his wise, just, and good government of this lower world.

In fine, I depart this waste, this howling wilderness, with a mind serene, free from all malice, with a forgiving spirit, so far as the gospel of my dear and

only redeemer obliges and enjoins me to, hoping and praying that Jesus, who alone is the giver of repentance, will convince, conquer and enlighten my murderers' souls, that they may publicly confess their horrid wickedness before God and the world, so that their souls may be saved in the day of the Lord Jesus.

After the execution of Ury, a day of thanksgiving to Almighty God was observed, by public command, "for the deliverance of his majesty's subjects here from the destruction wherewith they were so generally threatened by the late execrable conspiracy." But the public mind was at rest for a short time only. A few negroes in Queen's county, on Long Island, having formed themselves into a military company, for amusement on the christmas holidays, a letter was written to the authorities there by the attorney general, and the slaves were severely chastised "for this daring piece of insolence." The cry of a new plot was immediately raised, which resulted in the arrest of several slaves, one of whom was executed. The excitement soon subsided, however, and the prosecutions were becoming unpopular, more especially as Mary Burton, the common informer, began to give out intimations against people of consequence in the city. The last act of the tragedy was the payment to this wretched creature, by the city authorities, of the reward of one hundred pounds, originally offered to any one who would disclose the plot.

The whole number of persons taken into custody on suspicion of being engaged in the conspiracy was

over one hundred and fifty. Of these, four white persons were hanged; eleven negroes were burnt, eighteen were hanged, and fifty were transported and sold, principally in the West Indies. Several persons who were suspected made their escape out of the colony.

Thus ended the famous negro plot of New York. Upon a review of the evidence, as reported by one who had implicit faith in the existence of a conspiracy to burn the city and murder the inhabitants, we have no difficulty in pronouncing the whole thing to have been a complete delusion. The numerous contradictions, the glaring inconsistencies of the witnesses, and the monstrous perversions of law and evidence on the part of the magistrates, render argument upon the subject entirely unnecessary; and it is gratifying to know, that the people of that day did not all of them approve of the acts of folly, injustice and cruelty with which this supposed conspiracy was attended. "There are," exclaims the historian of the plot, "some wanton, wrong-headed persons, who take the liberty to arraign the justice of the proceedings, and set up their private opinions in superiority to the court and grand jury, and declare with no small assurance, that there was no plot at all!"

Nor is it difficult to account for this delusion. It was the natural result of the condition of society at that day. Domestic slavery, founded in wrong and injustice, must always be attended with peculiar evils, even in its most mitigated form, and it is a question of no easy solution, whether the master or the slave suffers most from its influence. Unrestrained control

and passive submission are equally injurious to the human character. While the slave is kept at the level of the mere brute, the master finds his safety only in the restraint of brute force, and habits of distrust and jealousy are naturally engendered. Servile insurrections, the most dreadful of any which history records, create alarm and consternation, which no open and avowed enemy can accomplish. The people feel that their enemies are within their bosom. The terror of each man becomes a source of terror to every other; and, an universal panic being diffused, reason and argument, common sense, and common humanity, lose all their influence.

Domestic slavery had, in a measure, been forced upon the American colonies against their will. In New York, at the period referred to, the system existed in its least mitigated form, and the severest laws were necessary to keep the slaves, who composed one sixth of the population, in subjection. They could not be witnesses against a free man; they were incapable of purchasing the necessaries of life; they were punishable by their masters to any extent short of life or limb; as often as three of them were found together, they were punishable with forty lashes on the bare back, and the same legal liability attended the walking with a club out of the master's ground without a permit; and two justices might inflict any punishment short of death or amputation, for a blow or the smallest assault upon a Christian or a Jew.[1]

[1] Dunlap's History of New York, i. 323.

Notwithstanding these severe regulations, the slaves were a source of constant anxiety and suspicion to the white population. While the people were in this timorous and jealous disposition, the cry of *plot* all on a sudden struck their ears; they were awakened from a slumber, and, like men affrighted, and in the dark, they took every figure for a spectre.

TRIAL OF JACOB LEISLER

BEFORE A

SPECIAL COURT OF OYER AND TERMINER,

FOR HIGH TREASON.

NEW YORK, 1691.

The proceedings of Jacob Leisler and his adherents, which distracted the province of New York, long after the principal actors in the scene had passed from the stage, form a prominent topic of remark in the histories of the period referred to. Smith's History of New York, published in 1732, contains a brief and succinct account of the revolution, commenced by Leisler, and its consequences; but Mr. Dunlap, in his late history of that state, has given a more detailed statement, in which some new facts are evolved, and a somewhat different impression is given of the character and proceedings of Leisler, than is received from the works of other writers, who do not appear to have examined the subject with very great particularity. I am not aware that any detailed report of the trial was ever printed, and of the actual proceedings on that occasion but little can now be ascertained.

LEISLER'S REBELLION.

The accession of James II. to the throne of England, in 1685, was regarded with the liveliest satisfaction by the people of New York, who had reason to expect important benefits from one, whom they had regarded as their friend and patron. But they soon found that the king had entirely forgotten, or violated without hesitation, the promises he had made under the titles of York and Albany. Their disappointment was the greater, as it soon became apparent that James was determined to make the religion of Rome predominant throughout all his dominions. His bigotry prompted him to deliver up the Indians of the five nations to the influence of the French jesuits, and the French authorities in Canada undertook with great zeal to chastise, or debauch by intrigue, the tribes who had preferred the English alliance to their own.

Dongan, the governor of New York, himself a Ro-

man catholic, resisted the intrusion of the French priests into the settlements of the Indians, and, having incurred the displeasure of his royal master, through the repeated complaints of the court of France, he was ordered to deliver up his charge to Sir Edmund Andros, the governor of Massachusetts. New York was thus subjected to the rule of its ancient tyrant, and the people were mortified at the annexation of the province to the government of New England.

In the midst of these discontents, intelligence was received of the invasion of England by the prince of Orange, and of the accession of William and Mary to the throne. Notwithstanding the government of Andros had been terminated by a successful insurrection at Boston, the local authorities of New York indicated a hesitation to comply with the general revolution. Nicholson, the lieutenant governor, refused to proclaim William and Mary, and even despatched a letter to governor Bradstreet, at Boston, commanding the instant release of Andros, and the suppression of the *insurrectionary rabble*, who had presumed to put him in confinement. A large party broke out into open discontent at this state of things, and found a chief in Jacob Leisler, a merchant of respectable standing, and a zealous friend of the protestant cause, who had formerly suffered imprisonment by the order of Andros, for opposing one of his illegal acts while governor of New York.

The immediate occasion of the revolt was a report in May, 1689, that the papists intended to attack and massacre the people while at church in the fort, and declare for James II. The people assembled in

a tumultuous manner, seized upon the fort, which the five captains of the trainbands agreed to keep, each in his turn. A committee of safety was chosen for the immediate government of the province, who signed an agreement to adhere to the prince of Orange, and, with their lives, to support the protestant religion. The captains of militia formed a part of this committee, and Leisler[1] was regarded as the principal in point of age, standing, and mercantile credit. Their declaration, published to the world, avowed their purposes. "As soon as the bearer of orders from the prince of Orange shall let us see his power, then without delay we do intend to obey, not the orders only, but also the bearer thereof."

The times demanded a leader who possessed the knowledge, address, and firmness of a veteran statesman. Jacob Leisler had none of these. A simple burgher of New York, his education and knowledge of the world were not such as to fit him for the trying emergencies in which he was placed. In assuming power, he rested chiefly for his support upon the less educated classes of the Dutch; English dissenters were not heartily his friends. The large Dutch landholders, many of the English merchants, the

[1] Hutchinson relates, that a short time before this open revolt, one of Leisler's ships arrived in New York with wines, on which the duties amounted to one hundred pounds, which he refused to pay, "the collector being a papist, and there being no legal authority to receive it." Soon after, he excited the people on the east end of Long Island to march to New York to obtain possession of the fort, to prevent its being delivered up to foreigners. When within twelve miles of the city, the lieutenant governor induced them to return to their homes.

friends of the English church, the cabal that had grown up round the royal governors, were his wary and unrelenting opponents. But his greatest weakness was in himself. Too restless to obey, and too passionate to command; as a presbyterian he was averse to the church of England; as a man of middling fortunes to the aristocracy; while, as a Dutchman and a calvinist, he was an enthusiast for William of Orange.[1]

Massachusetts and Connecticut gave countenance to his measures, and his authority was soon generally acknowledged by the middle and lower classes. Nicholson, the lieutenant governor, fled to England, and Courtlandt, the mayor of the city, Colonel Bayard, and others of his council, "gentlemen of figure," unable to brook the ascendancy of a man, "mean in his abilities, and inferior in his degree," retired to Albany and seized the fort there, declaring that they held it for William and Mary, but would maintain no connexion with Leisler. Each party now professed allegiance to the same sovereign, and denounced the other as rebels. Leisler sent Milborne, his son-in-law, to Albany to demand the surrender of the fort, which was refused. Afterwards letters were received from England, addressed to Nicholson, or, in his absence, to "such as, for the time being, take care for preserving the peace and administering the law" in New York. After some slight hesitation on the part of the messenger, occasioned by the attempts of the party at Albany to obtain possession of the

[1] Bancroft's History of the United States, iii. 51.

despatches, they were delivered to Leisler. They contained a commission to Nicholson, "to do every thing appertaining to the office of lieutenant governor, according to the laws and customs of New York until further orders." Nicholson having left the province, Leisler considered the commission as directed to himself, and esteemed his authority to have received the royal sanction. By advice of the committee of safety, he now assumed the title of lieutenant governor. To add strength to his party, a convention was summoned of deputies from all the towns to which his influence extended, and various regulations were adopted for the temporary government of the province.

Bayard, a member of the Albany convention, being found in New York, was arrested and imprisoned for high misdemeanors, and for certain libellous writings, containing "execrable lies and pernicious falsehoods." The convention at Albany was dissolved, the members took refuge in the neighboring colonies, and there was soon no open and organized opposition to Leisler's authority. But success was more dangerous to the popular chief than adversity. His vindictive rashness, his want of experience, and more than all, the failure of some of his important measures of government, and the imposition of taxes, were rendering him unpopular with the people. "Destitute of equanimity, his failure was inevitable." The king had received Leisler's messenger in a flattering manner; but Nicholson, who had arrived in England, contrived to poison the royal ear against the man who first raised the standard of the revolu-

tion in New York, and Leisler vainly waited for any express confirmation of his power, or thanks for his efforts in the cause of his sovereign.

Sloughter was appointed governor in 1689, but remained in England a considerable time afterwards. Meanwhile, Ingolsby, who bore a commission as captain, arrived in New York, in January, 1691, in the ship Beaver. He announced the appointment of Sloughter as governor, and called for a surrender of the fort. Leisler demanded to see his commission, or order from the ministry or governor; he refused submission to a man who bore no letters or orders from England, and issued a proclamation that on the arrival of the governor, the government should be cheerfully surrendered up to him. Ingolsby issued a counter proclamation, and besieged the fort. Thus the aristocratic party, the determined and wary enemies of Leisler, obtained a leader in an officer of the king.

On the arrival of the governor, in March, 1691, he sent Ingolsby to demand the surrender of the fort. Leisler's fears for his safety, or his love of power, overcame his prudence, and he refused to obey, thus giving his enemies a pretence for his destruction, which otherwise they would have vainly sought in all his acts. A second demand was made, but Leisler knew that his enemies had obtained the ear of the governor, and, in the effort of folly and despair to secure his own safety, he still hesitated, but sent messengers to the governor, who were immediately seized as rebels. Leisler now abandoned the fort, and was seized and thrown into prison, together with his son-in-law and several of his adherents.

The prisoners were immediately brought to trial before a special court of oyer and terminer. Six of the inferior insurgents were convicted of high treason, and were subsequently reprieved. Leisler and Milborne denied to the governor the power to institute a tribunal for judging his predecessor, and vainly appealed to the king. The trials proceeded before a tribunal, erected for the purpose of giving the sanctions of the law to the determinations of power. Joseph Dudley,[1] the chief justice, had been expelled from Boston by the same general revolution to which Leisler owed his elevation. How could the latter expect a favorable appreciation of his conduct from a tribunal, erected by his enemies, and occupied by an exasperated antagonist? Refusing to plead to the charge against him, he was convicted by the jury, and was condemned to death, with Milbourne, as a rebel and a traitor.

The governor hesitated to destroy the men, who first raised the standard of William of Orange and protestantism. "Certainly never greater villains lived," he wrote; but he "resolved to wait for the

[1] He was a native of Massachusetts, and held several offices of trust there. He was a judge at the time of the revolution in 1689, when he was imprisoned, and was sent to England with Andros. In the following year he was appointed chief justice of New York. He was subsequently lieutenant governor of the isle of Wight, and a member of parliament. He returned to Boston in 1702, as governor of Massachusetts. No citizen of New England enjoyed so many public honors and offices. He was a learned man, and, in private life was amiable, dignified, and elegant in his manners. His conduct at the trial of Leisler is a blot on his character, and was the ground of severe charges against him in England. He died in Roxbury, Massachusetts, in 1720, at the age of 70.

royal pleasure, if by any other means than hanging he could keep the country quiet." But the enemies of Leisler were bent on his death. They invited Sloughter to a feast, and, when his reason was drowned in his cups, he was prevailed on to sign the death warrant; before he recovered his senses, the prisoners were executed.

On the sixteenth of May, 1691, amidst a drenching rain, Leisler, with his son-in-law, Milbourne, was led to the gallows. Parting with his wife Alice, and his numerous family, he met his death with fortitude, and as became a christian. At the place of execution, after praise to God, he expressed his sense of his dying state and submitted himself before a just God with humility and hope. He avowed, that, at the request of a committee, chosen by the major part of the inhabitants of the province, he had taken upon him, "to the great grief of relations to be left behind," weighty matters of state, "requiring a more wise, cunning, and powerful pilot to govern;" an undertaking for which his motives were the protestant interest, and the establishment of the government of William and Mary. It was true, he said, that in this endeavor for the public good, several enormities had been committed against his will. He had longed to see a governor sent, to put a period to the disorders existing; some of which, on his part, were committed through ignorance, some through jealous fear, some through misinformation and misconstruction, and some through rashness or passion. For all his offences, he asked pardon of God, and of all persons offended. His enemies he forgave, and prayed that all malice might be buried in the grave.

He enjoined upon his friends to forget any injury done to him. He prayed for the good of the province, and, as his last words, declared, that, as to the matter for which he was condemned, his purpose was for the good of his fellow creatures, according to the understanding and ability which he possessed, by preventing popery and upholding the government of William and Mary. He concluded a prayer for all in authority, by one for comfort to his own afflicted family; and he asked for them the charity of all, and their prayers for himself.

Being asked by the sheriff "if he was ready?" he said "yes," and requested that his body might be delivered to his wife; and, as his family had been educated as christians, he hoped they would act as such. Turning to Milbourne,[1] he exclaimed, "why must you die? you have been but as a servant, doing my will; and, as I am a dying man, I declare before God and the world, that what I have done was for king William and queen Mary, the defence of the protestant religion, and the good of the country." Having again professed his reliance on God, he signified his readiness to depart, and his sufferings were soon ended.

The populace, overawed by the soldiers, were dreadfully agitated by this painful spectacle. The

[1] Milbourne had not the patience and submission of his father-in-law. Seeing Livingston, one of his enemies, in the crowd, he exclaimed: "you have caused my death: but, before God's tribunal, I will implead you for the same." Being asked whether he would not bless the king and queen, he answered: "it is for the king and queen I die, and for the protestant religion."

shrieks of fainting women were terrible to hear; and the torrents of rain added to the gloom and horror of the scene. When the prisoner was dead, his garments were cut in pieces by the crowd, and his hair was divided as the precious relics of a martyr. At the same hour, and in the same town, the members of the council and the judges were revelling in beastly triumph, and with them the governor, insensible at his cups, was delayed until the execution was over!

Thus perished Jacob Leisler, a victim to party malignity. The first to raise the standard of William and Mary, he was the first to suffer as a traitor. The appeal to the king, which had been denied him during his life, was prosecuted after his death by his son. It was held that the forms of law had not been broken in the condemnation, but his estate was restored to his family, and an act of parliament, vainly resisted by the judge who condemned him to die, did justice to his memory by reversing the attainder. His violence and incompetency were forgotten in sympathy for the injustice of his death. His friends afterwards formed a powerful and ultimately a successful party; and one of his principal enemies was himself condemned, by a court erected for the occasion, as a rebel and a traitor.

TRIAL OF NICHOLAS BAYARD

BEFORE A

SPECIAL COURT OF OYER AND TERMINER,

FOR HIGH TREASON.

NEW YORK, 1702.

The trial of Colonel Nicholas Bayard, at New York, for high treason, in 1702, appropriately follows the preceding account of Jacob Leisler's case, in 1691. They explain each other, and are both singularly illustrative of the condition of the province, at the periods when they occurred, distracted as it was by two rival factions, who carried their dissentions to an excess which has no parallel in this country. The following account is derived from standard historical works, and from a full report of the trial, which appears to have been prepared by Bayard himself or some of his friends, and which is contained in the fourteenth volume of Howell's State Trials. There is no reason to doubt the general accuracy of that report, although some of the statements in it should be received with much allowance. The trial, as reported, gives evidence of great learning, research, and skill on the part of the prisoner's counsel, but the discussions which relate to mere questions of abstract law are here omitted.

COLONEL BAYARD'S TREASON.

For many years subsequent to the accession of William and Mary to the throne of England, the province of New York was agitated by a strife between the rival political parties, so bitter, that the rights of the defeated were grossly violated, and they were not always safe in their liberty and their lives. Jacob Leisler fell a victim to the malignant feelings engendered by these contentions in 1691; and the passions, excited in his adherents by his melancholy fate, continued long to distract the public councils, and to embitter the social intercourse of the inhabitants of the province. His son, Jacob, unmindful of his father's dying request, made upon the gallows, could never forget or forgive his melancholy death, and lost no opportunity to vindicate his name, and to cast odium upon those who had been instrumental in the wrongs he suffered; nor was he unsuccessful.

The "people of figure," or aristocratic party, main-

tained their influence with those in power until the arrival of Lord Bellamont in 1698, as governor of the province. The sympathies of that nobleman had been excited in England by young Leisler, in favor of his adherents, who were thus favored by the governor's countenance and support. At the death of this nobleman, in 1701, the ancient animosities of the rival factions were revived with the utmost zeal and fury. Information being received that Lord Cornbury was to succeed the Earl of Bellamont, the aristocratic party, now in the minority, took measures to secure the new governor to their own interests. Nicholas Bayard who had been long imprisoned by Leisler, and was instrumental in his death, procured addresses to be signed to the king, to the parliament, and to Cornbury, in which the most scandalous charges of bribery, of public plunder and oppression, were preferred against the lieutenant governor, the chief justice, and the assembly, and reflections were liberally cast upon the memory of Lord Bellamont himself.

When this came to the knowledge of Nanfan, the lieutenant governor, he saw that Bayard had fallen into a pit he had himself prepared for others, and committed him to prison as a traitor; for that partisan had procured a law to be made in 1691, when Leisler and his friends were devoted to ruin, which provided, that whenever any person by any manner of ways, or upon any pretence whatsoever, should endeavor, by force of arms, or otherwise, to disturb the peace of government, he should be deemed a traitor. Thus was the leader of the aristocratic party in the power of his enemies, by means of a

law of his own, procured years before for their destruction. What justice could he expect in a trial at that day, and under those circumstances?

The party in power, as if conscious that their authority and influence would soon be impaired, determined to bring the prisoner to immediate trial, before the arrival of the governor, so that he should not be saved by that functionary, who, there was reason to believe, would espouse his cause. Although Broughton, the attorney general, gave a written opinion, that no crime had been committed, a special court of oyer and terminer, consisting of three justices, was immediately erected for the trial of Bayard and one of his adherents. In vain he petitioned that his trial might be delayed until the regular term of the supreme court. Five days was the utmost delay he could obtain, and, on the nineteenth of February, 1702, the court assembled to decide his fate.

Broughton, the attorney general, refused to prosecute, and was not present at the trial, for which a minute was made by order of the court, that he had neglected his majesty's service. "It is no wonder," exclaimed Atwood, the chief justice, "the people here contemn his majesty's authority, since the attorney general, though commanded to prosecute by the government, hath neglected to do the same, and hath given a judgment and opinion contrary to the lieutenant governor and council." The prosecution was accordingly conducted by Weaver, the solicitor general. The prisoner was defended by Messrs. Emot and Nicholl.

When the grand jury were called, the prisoner's

counsel objected to some of them, for having declared "that if Bayard's neck was made of gold he should be hanged," at the same time boasting that they were of the jury; but the objection was immediately overruled. A part of the jury insisted that they had a right to deliberate alone, whereupon the solicitor general took down their names and threatened that he "would cause them to be trounced," and the jury broke up in confusion without acting. The solicitor general then complained to the court, that four of the jury insisted that he should not be present at their deliberations, and the court ordered them to be forthwith discharged. Still the jury hesitated to find a bill of indictment, and, when they did return one into court, it was immediately objected that the competent number had not voted for it, and it appeared by the statement of eight of the nineteen jurors, that they had not voted in favor of it. But the court decided that the indictment had been regularly returned; it was thus a matter of record, and no averment against it could be received. "It is very hard," exclaimed the counsel for the prisoner, "the court appoints the foreman of the grand jury, and he may chance to be a person prejudiced against the prisoner, who may sign and return a bill of indictment without the consent of his fellows, and because it is a matter of record, no averment shall be allowed against the bill!"

The indictment set forth that the prisoner, on the tenth of December, 1701, "falsely, maliciously, advisedly, clandestinely, rebelliously and tratorously," used divers indirect practices and endeavors to pro-

cure mutiny and desertion among the soldiers in the fort, and drew numbers of them to sign false and scandalous libels against his majesty's government; in one or more of which libels, amongst other things, highly reflecting on the last and present administration of the government under his majesty in this province, it was insinuated and declared, that his majesty's subjects within the province were, and had been for some years past, oppressed by persons entrusted with the administration of the government; that the government was rendered cheap and vile in the eyes of the people, and that the present general assembly of the province was not a lawful assembly. By which and other scandals in these libels, the prisoner had incited his majesty's subjects in the province to disown the present authority, and to cast off their obedience to his majesty's government.

The prisoner, upon his arraignment, pleaded not guilty, and desired that he might be allowed two clerks to take the minutes of the trial. The request was denied. "I find it was allowed my lord Russel and others," he said, "to employ clerks. I pray the same liberty." "It was allowed my lord Russel," was the reply, "but you would not be willing to meet with the hardships of his trial."

The prisoner then sent a petition to the court, in which he set forth the injustice and irregularity of the proceedings against him. The indictment, he said, was not agreed to by any twelve of the grand jury, and he prayed that all the members of the grand jury might be examined by the court upon this point. He also insisted, that, as a matter of

justice to him, the grand jury ought to have been composed of Englishmen, and of English extraction, of the best character for knowledge, integrity, justice, conscience, and estates; yet there was not a single Englishman on the jury, but all of them were of Dutch extraction and education, and several of them ignorant to that degree, that they could neither read nor write, nor understand the English language. He also complained, that the petit jury was principally composed of Dutchmen, extremely ignorant of the English language.[1] Of course the petition had no effect.

The solicitor general then made an introductory harangue to the jury, in which he declaimed against the English and French inhabitants of the colony, including the principal Dutch. He charged the prisoner with being the head of a faction, a malignant party, who had endeavored to introduce popery and slavery, "disturbers of our Israel," as they had been of the government of Leisler, which, he said, was now justified at home to be legal. He accused them of being a nest of pirates, betrayers of the prince and his laws, a parcel of banditti, who offered the late Earl of Bellamont a reward of ten thousand pounds to connive at piracies.[2] He avowed himself

[1] In this, the strife of party is manifest. Jacob Leisler, it will be recollected, was a Dutchman, and his adherents were principally of that race. Bayard might well object to be tried by those who were not likely to forget the fate of their chief.

[2] These charges, though probably exaggerated by party animosity, were not wholly destitute of foundation. The "people of figure" in New York were more than suspected of favoring the piracies of Kidd and others; and in moral and political honesty, the aristocratic party were inferior, to say the least, to the less educated Leslerians.

to be of the Leslerian party, and said he would stand or fall by it. He then detailed the facts he expected to prove, and the witnesses were called and gave in their testimony.

Samuel Clows. About a fortnight or three weeks before Colonel Bayard's commitment, I happened to come to his house about some business, not at all relating to this matter; concerning which, as we were talking, Colonel Bayard asked me, if I had seen the addresses? I answered, no. He then showed me three addresses; the first was to my Lord Cornbury; the persons addressing in it called themselves inhabitants of New York, and others distant from it; and, because some of them could not perhaps be present at his lordship's arrival here, did, by way of address, congratulate his lordship into this government, wishing him all health and prosperity here, and that the name of party might be banished from among us. After I had read it, Colonel Bayard asked me, if I had any thing to say against it? I answered, no, and then signed it. The other two addresses were, one to the king, and the other to the house of commons, or to the parliament, I am not positive which; as I had read them, I remember I made this observation to myself, that they contained nearly both the same things; and in them, or one of them, to the best of my remembrance, were contained these things, the persons addressing, called themselves Englishmen and others, who, though foreigners, were entitled to the privileges of Englishmen here. It speaks concerning the late revolution here, of which

I have but a confused idea, and can remember nothing particular; afterwards it speaks concerning my Lord Bellamont's administration, in several articles, of which I can remember but one, which is, that the hottest and ignorantest of the people were put into places of trust. Then it speaks concerning the late assembly here, and tells you, that after this assembly had chosen a speaker, some of the representatives were informed that he was an alien; upon which they made a motion to the house, that that matter might be inquired into; but that motion being refused, one half of the representatives, or ten of them, left the house; notwithstanding which, the remaining part of the representatives, with some others they took in, did proceed to make acts; in one of which acts they gave a sum of money to the lieutenant governor, to tempt him to pass these acts; and likewise a sum to the chief justice of this province, to find law and form for their proceedings; and, that these things tended to the rendering the government vile and cheap in the eyes of the people.

Solicitor General. What names do you remember you saw to the addresses?

Clows. I saw several names there; but whether to all three, or two of them, or only to that of my Lord Cornbury, I cannot say; but I did, to the best of my remembrance, see the names of Rip van Dam, Matthew Ling, Charles Wooley, Robert Livingstone, and Mr. Anderson; but I am not certain whether I saw Mr. Jamison's name there or no. When I had read them, I told Colonel Bayard, they contained things done before my time, and I did not therefore

think it proper for me to sign them; upon which he replied, "then do not sign them."

Solicitor General. I shall read what you said before the council.

"Do so, if you please."

"Do you not remember that it was said, that my Lord Bellamont had put the most ingenious and honestest men of the province out of all places of trust?"

"No, I cannot remember that."

"I think you said so before the council."

"Perhaps I might say something like it when I was before the council, though I do not believe there is any essential difference between what I now say, and what I said to the council; yet if there be, I hope what I then said will not be taken to my prejudice; I was then sent for by the governor's letters, which seemed to import, that he had business with me of a far different nature than to examine me about this matter; so that I was then in a surprise."

"But you believe what you then spoke was true?"

"Without doubt; and I hope Mr. Cosens took care truly to write down what I then delivered; but, whether he did express my meaning right or no, I know not; for I did not look over his notes till the day I saw them at your chamber."

"Was not the assembly called an illegal assembly; and that they had made acts prejudicial to the country?"

"No, I do not remember that."

"Was it not said that the scum of the people were put into all places of trust?"

"Perhaps I might before the council use the word 'scum;' but I now think it was, that the 'hottest' and 'ignorantest' were put into places of trust."

"Mr. Clows, pray tell us, what was the reason why you did not sign the other two addresses?"

"I think I am not at this time obliged to tell that, as it does not at all affect the matter."

Chief Justice. Yes, but it does; you must tell us.

Witness. One of the chief reasons was, because I then thought, that the saying the assembly had given a gift to the lieutenant governor, to tempt him to pass their acts, was a reflection upon the lieutenant governor; but it is my judgment now, that it was no reflection at all upon him.

Solicitor General. How! and do you not think so now?

Chief Justice. He only speaks it as his judgment.

Solicitor General. Do you not remember, that the assembly was called "The Pretended Assembly?"

Witness. No.

Solicitor General. Do you not remember, it was said, "their illegal proceedings?" Do you not remember the word "illegal?"

Witness. No, I cannot remember that; and I desired you, at your chamber, to put that word out of the clerk's notes.

Prisoner. Did I ever ask you to sign them?

Witness. No, you did not; you was so far from doing that, that you rather persuaded me not to sign them; and so did Madam Bayard, who was then in the room.

Nicholl. Do you remember any thing of the word "oppression" in the address?

Witness. No, I do not remember that word.

Solicitor General. That the king's subjects were oppressed here?

Nicholl. Was the assembly called an "unlawful assembly?"

Witness. No, gentlemen; I can speak positively to but few of these things; what I say is, to the best of my remembrance and understanding.

Peter Odyre. Going by Colonel Bayard's house, one Mr. Bodinot told me, I must step in to Colonel Bayard's, and sign an address to the king; and as I was going in, I met Colonel Bayard coming forth of his house; and, going in, I saw the addresses lying on the table.

Solicitor General. Did Colonel Bayard then persuade you to sign them? or, did he tell you it was for your good to sign them?

Witness. Colonel Bayard then told me, I might sign if I would, or that I might not; and the colonel also told me it was for the good of the country; and that, if I was willing, I might sign them; if not, I might let them alone; and then went away.

W. Richardson. One day drinking at one Spencer's, I was desired to go to the coffee house, which I did; and, when there, I saw a great many people, I believe near a hundred; and, coming above stairs, I saw papers on the table, which were called "addresses," which I signed with others; and I saw, among others, Colonel Bayard there; but he seemed to be no more acting or concerned than any other.

Chief Justice. You are very forgetful of what you swore before the governor and council; but, to put you in mind of somewhat of it, did nobody tell you what papers were to be signed?

Witness. Nobody at all.

Solicitor General. How many papers did you sign?

Witness. I signed three, but did not know what they were, but was told they were addresses to the king, and my Lord Cornbury, and the parliament, but did not read any of them; but, I think, one of them complained, that the people lay under some hardships here.

Solicitor General. You declared much more before the council.

Witness. I was then called suddenly before the council, and was surprised.

John Bashford. I was at the coffee house, where I saw the papers or addresses, but do not know what they were or contained; and I signed four or five papers there, but did not stay half a quarter of an hour. When I was there, I saw Colonel Bayard amongst many others in the room, but did not see his name, as I remember, to any of the papers.

Chief Justice. These witnesses are very unwilling, or very forgetful, having given a much different account of things upon their oaths before the governor and council.

Witness. I have now had time to recollect myself, but was then under a surprise, not knowing what I was sent to for.

Michael Christian. I remember, some time since, about Christmas, I believe, I was at the coffee house, where I saw the addresses, with many other people, but cannot tell how many.

Chief Justice. Do you believe there were more than twenty?

Witness. No, I believe there were not. I found three addresses there, and signed them all, but the substance thereof I cannot now remember; it is a good while since, and therefore I cannot speak positively to it. I remember, a question was asked me at the council, whether there were any complaints in the addresses that the soldiers wanted their pay? I believe I might then answer something about it, but I do not know any such thing in the addresses, either of the soldiers or their pay. I remember that Colonel Bayard was then at the coffee house when I signed the addresses, but do not remember that any body desired me to sign.

Chief Justice. How many hands, Mr. Christian, did you see to the addresses?

Witness. I cannot tell how many, but remember Colonel Bayard amongst others was there; but he never asked me to sign either of the addresses; nor can I remember that there was any thing concerning either the soldiers or their pay in the addresses.

Chief Justice. Certainly these gentlemen are very unwilling evidences. Mr. Christian is a gentleman of good learning, and it is strange that he should be so forgetful, that he cannot remember what was given in on his oath before the governor and council; he has either a weak or a treacherous memory.

The solicitor general then called witnesses to prove the character of the people "who were drawn in to sign these papers." Some of them it appeared were minors, and many were soldiers of the fort, who expected to be "made free of the city," though they admitted that no one told them so explicitly.

Solicitor General. I have now proved by the witnesses those false and scandalous libels set forth in the indictment, whereby the good, peace, and quiet of the government has been disturbed, which by this act of assembly is high treason. I have likewise proved, that the soldiers were drawn in to sign those scandalous libels, and that some did sign blank rolls, which was listing of soldiers, and is treason. These words in the petition to the lieutenant governor and council, viz. "who we understand, by certain advice we have received from England, to be nominated by his majesty to succeed the late Earl of Bellamont as our governor," are a disowning and casting off the present authority, and his majesty's government.

Then the counsel for the prisoner addressed the court and jury in his behalf.

Nicholl. Your honor and the jury will please to take notice, that the indictment consists of divers heads; as, that the prisoner did compass, imagine, contrive, propose and design to defame the peace, good and quiet of this his majesty's government; that he used divers indirect practices and endeavors to procure mutiny and sedition among the soldiers; that he drew in numbers of them, the said soldiers and others, to sign false and scandalous libels, and

that he had signed them himself; that in these libels it is declared, that the subjects in this province are and have been for many years last past, by those entrusted in the administration of the government, oppressed; and that the government hath been, and is rendered cheap and vile in the eyes of the people; as, also, that the general assembly of this province is not a lawful assembly; by which means he hath incited his majesty's subjects to cast off their obedience to his majesty's said government.

The prisoner is not directly charged here with any fact, except his own signing the said libels, but for endeavors; the rest are forced conclusions and strained inferences drawn from thence. It is not alleged, that the peace of the government has been disturbed, or that any mutiny or sedition has been amongst the soldiers, or that any one of his majesty's subjects has cast off his obedience to his majesty's said government. By the course of the evidence, it appears, there was an address to the king, an address to the house of commons, and an address to my Lord Cornbury, and a petition or address to the lieutenant governor and council; but all the evidence is very lame and weak, as to the three first, if we should admit the making or signing of them to be any fault or crime, more especially if the same should amount to treason; for by none of the evidence does it appear that the prisoner signed these addresses; here is not so much as the likeness or comparison of hands produced, alleged, or proved; though if it were, that would not do.

But I shall not dwell upon the evidence; it is cer-

tainly the right of the subject to petition the king, whenever he conceives himself aggrieved. In the Bishops' trial, Mr. Pollexfen says, "I never thought it, nor hath it since been thought by any body else, to be a crime to petition the king." Sergeant Levinz affirms, "the subjects have a right of petitioning the king in all their grievances." So say all our books of law; so says the statute of the 13th of Charles II.; they may petition. Sir Thomas Powys, then attorney general, acknowledges that access to the king by petition is open to every body; the most inferior person is allowed to petition the king. Mr. Justice Holloway says, "it is the birthright of the subject to petition the king." If it is the birthright of the subject to petition the king, to procure or draw in men to do what is their birthright to do can never amount to a crime.

Chief Justice. I do not say petitioning the king is a crime, but it may be to petition the house of commons in the plantations, where the king governs by prerogative.

Nicholl. I cannot think it is a crime for the subjects of the plantations to petition the house of commons; it is every day's practice. Consult the votes in every session, you will find many addresses, petitions, and complaints from the subjects of the plantations. It seems to be the right of the subjects to petition the house of commons. The statute of the 13th of Charles II. c. 5, restrains the common law; by that it plainly appears to be the right of the subject to petition the house of commons, or the king. The proviso in that act says, "that neither that act,

nor any thing therein contained, shall be construed to extend or hinder any person or persons, not exceeding the number of ten, to present any public or private grievance or complaint to any member of the house of commons after his election, or to the king's majesty." By the act of recognition of William and Mary, declaring the rights and liberties of the subjects, and settling the succession of the crown, it is enacted, amongst other things, "that it is the right of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal." And they do claim, demand, and insist, upon all and singular the premises, as their undoubted rights and liberties; and that no declaration, judgment, doings or proceedings, to the prejudice of the people, in any the said premises, ought in any wise hereafter to be drawn into consequence or example. Here is no grant of any new privilege, but a claim and acknowledgment of an ancient right; and petitions to the parliament are as ancient as parliaments themselves. If the subjects of the plantations may not petition and complain to their prince, they are in a worse condition than slaves. The cries of the oppressions in the plantations have gone up to heaven, and are again come down upon the earth, and have inspired and moved the king and parliament of England to make a law to check the exorbitant actions of governors in the plantations, and make them accountable in England for their miscarriages abroad; which can never be discovered to the king but by petition.[1]

[1] This act provided that if any governor of any colony should be

This prosecution seems to be made to frustrate and evade this act of parliament. The subject is oppressed, or conceives himself to be so, and complains of this oppression; this complaining is made treason! Here is a strange and fatal dilemma on the subjects of the plantations. They must either suffer their oppressions, or be hanged for traitors if they complain!

The act of assembly of this country can by no natural or legal construction be extended to make the prisoner culpable. It is plain by the whole purport of the act, that it has made no new treason; it only recognises the king and queen; and enacts, that those who shall do any thing destructive to that establishment, by force of arms or otherwise, shall be rebels and traitors; which they would be without this act. If this address and petition had been to the French king, the thing had been of another nature. By the same construction, every petty battery, or other little trespass, may be a treason.

The petition of Colonel Bayard and the other three is so far from disowning the government, that it is a direct acknowledging of the same. The direction of the petition is, to the lieutenant governor and the council. The expression "that they have advice that Lord Cornbury is to succeed the Earl of Bellamont" can with no justice or common sense be construed to be a disowning and casting off of the gov-

guilty of oppressing his majesty's subjects beyond the seas, or should be guilty of any other crime or offence, the same should be inquired of by the court of king's bench in England, and such punishments inflicted as were usually inflicted for offences of a like nature committed in England.

ernment. I think it will hardly be affirmed, that the council succeeded the Earl of Bellamont, and Captain Nanfan[1] the council; if so, after the Earl of Bellamont, who was captain general? We had seven captains-general; which is an absurdity, I suppose, none will allege. A familiar example will demonstrate the weakness and falsity of this construction. If a captain of a company be killed or absent, the lieutenant or next officer has the full command of the company, as the captain had, or could have; but I think no man will say he succeeds the captain, or that when another captain is appointed he succeeds that lieutenant or other officer. So that I cannot think there is any fact or crime alleged or proved against the prisoner, to charge him with this high crime of treason, or indeed with any other crime whatsoever.

Emot. By your honor's permission, I am of counsel for Colonel Bayard, the prisoner at the bar; but by reason I am unwilling to spend too much of your time, this trial already having been very long; and Mr. Nicholl, who is also of the counsel on the same side, having amongst other things made it very evident, that for the subjects to petition his majesty is their ancient and indubitable right; I shall therefore make it my business only, as near as I can, to demonstrate to this court and jury, that had the king's counsel made ample proof that all the matters of fact alleged in the indictment, as the signing the addresses,

[1] Some time after the Earl of Bellamont's death, Captain Nanfan, the lieutenant governor, was at Barbadoes.

and other things therein contained, were true; yet, in point of law, they cannot amount to that grand crime of high treason.

He then made an elaborate, learned, and able argument upon the law of treason, in which he examined all the authorities upon the subject, and exposed with great clearness and force, the absurdity of supposing the acts of the prisoner to constitute the grave crime of high treason. He then commented upon the act of the assembly, arguing that it had no relation to a case like this; and contended, in conclusion, that the jury were judges of law and fact. Matters of law, he admitted, were the most common and proper objects for the determination of the judges, yet as law arose out of and was interwoven and complicated with fact, it could not but fall under the jury's consideration.[1]

Several witnesses were then called in behalf of the prisoner, among them the minister of Trinity church, who testified to his exemplary character, and his attachment to the cause of the king.

The chief justice then charged the jury. The indictment he said, was founded upon the act of the assembly of New York, confirmed by his majesty, which had power to make acts of treason as well as parliament. The right of petitioning the king was not in dispute, but the manner of doing it made it criminal. It was perfectly plain, that the addresses of the prisoner was a disowning of the present au-

[1] This was many years, it should be recollected, before Andrew Hamilton asserted the same doctrine on the trial of Zenger. See p. 175.

thority, and a casting off his majesty's government as it was then established. The drawing in of soldiers to sign petitions was mutiny and sedition by the law; and drawing them in on false pretences, in hopes of freedom in the city, and subscribing their names on blank lists, was enlisting soldiers, and might be applied to invite in any foreign power. In conclusion, he strenuously insisted that the facts laid in the indictment were abundantly proved, and constituted the offence of high treason, and, therefore, the jury could do no otherwise than find the prisoner guilty.

The jury retired, but had not agreed at nine o'clock in the evening. The court adjourned to the succeeding Monday, and the jury had not then agreed upon a verdict, but requested further instructions. The chief justice proceeded to give them, and said he had received letters from the jury, and answered them, which answers were only his private opinion. He said if they were under any difficulty, whether the matters of fact alleged in the indictment, and which were proved to them, were treason or not, they might find the prisoner guilty; who had his advantage in moving in arrest of judgment, and might be relieved as to matter of law.

Emot. This is not fair, to give the jury a handle to find the prisoner guilty, in expectation of relief in arrest of judgment; for they are judges both of law and fact, as the case is now circumstanced; if they will enslave themselves and their posterity, and debar themselves of all access to their prince, they will be worse than negroes.

Chief Justice. This is not to be suffered, to offer these things to the jury after they have received their charge; therefore be silent. Then proceeding, he renewed his charge to the jury, aggravating the supposed crimes for the space of about half an hour.

Emot. I pray your honor to be heard one word. (This request he often repeated, and, at last, it was granted him.) The facts laid in the indictment were not proved, as to the disowning and casting off the government, encouraging of mutiny in the soldiers, or disquieting the peace of the government. Addressing the king is the undoubted right of the subject, both by common law and acts of parliament. If the subject, for complaining of grievances, set forth by petition, is to be attainted of high treason, we are in a worse condition than slaves.

The chief justice checked him, and commanded silence.

Nicholl. The act of parliament to punish governors in the plantations for oppressing the subject, is rendered useless and of no effect, if the subjects are deprived of the liberty to complain, and set forth their grievances, by petition to their king.

The jury again retired and brought in a verdict of guilty.

The prisoner's counsel immediately moved in arrest of judgment for several reasons, the principal of which was that no act of treason had been committed. These points were argued at great length, but were all overruled by the court.

Meanwhile, before sentence was passed, the prisoner made an urgent appeal in a letter he addressed

to De Peyster, one of his judges, in which he says: "Believe me, sir, as you may give credit to the words of a dying man, I die with a clear and good conscience, and as free of that horrid crime laid to my charge as the child yet unborn; and therefore hope God's merciful hand, who has never left nor forsaken me, will continue to support me to the very last, and that I may look death in the face, as a good christian ought to do; humbly submitting my all to his most wise, most just, and most merciful dispensations; for I am sensible there is no more than one death for me, and that, in all probability, considering my age, it might have been very soon, though this tribulation had not befallen me. I shall only add, that I hope in God's mercy for the pardon of all my manifold sins and transgressions, through the only merits of my saviour Jesus Christ; and that when I shall be no more, he will continue his grace to my dear wife, and my posterity; and, lastly, that my blood, which is struck at (by your brother's own expressions to myself, and your brother-in-law's to others, both not long since) may be the last to be spilt on account of our dismal and unhappy divisions; though I fear that out of my ashes such further calamities may arise to this poor bleeding province, as posterity will have cause long to lament; for it is not to be expected, that all the plots, contrivances and intrigues used in this matter (many of which, I assure you, are already discovered,) will have their end with myself; it had been more pardonable to have stabbed me in my sleep, or with Joab's hand, under a pretence of friendship, than to do it with Ahab's, under a color and cloak of

justice; and of the two, I leave others to consider, if this latter exceeds not the former; since it is not to be supposed, that Ahab's was so much out of malice; but the vineyard being denied him on his offering the worth of it in money, occasioned the innocent to be arraigned and slain for a pretended crime of blasphemy and high treason."

The prisoner also made a petition to the court, in which he set forth the irregularity of the proceedings against him: first, that the indictment was not returned by twelve of the grand jury; second, that the petit jury were all prejudiced against him on account of the unhappy divisions in the province, and they were extremely ignorant of the English language, scarcely one of them being able to say the Lord's prayer in the English language; that there was no proof of his signing or encouraging others to sign the petitions, and that the petitions contained nothing treasonable. Another learned argument was heard, but with no different result; and the chief justice demanded of the prisoner if he had any thing to say why sentence should not be pronounced.

Prisoner. I have nothing more to offer, than what my counsel have offered, and what is contained in my last petition.

Chief Justice. I am sorry to find you so impenitent of your crime, which is so heinous and abominable in the sight of God and man. You have lately made reflections upon the proceedings of this court against you as if it had been a design to do the job; comparing your case to that of Naboth's vineyard. But I hope God will open your eyes, that you may be convinced, and repent of the crime.

Then he pronounced sentence in these words: — It is considered by the court here, that you be carried to the place from whence you came; that from thence you be drawn upon an hurdle to the place of execution; that there you be hanged by the neck, and being alive you be cut down upon the earth, and that your bowels be taken out of your belly, and your privy members be cut off, and you being alive they be burnt before your face; and that your head be cut off, and that your body be divided into four quarters; and that your head and quarters be placed where our lord the king shall assign. And the Lord have mercy upon your soul.

"I desire to know," demanded the prisoner, "whether I have leave to answer your honor's speech, made before sentence?" "No." "Then," he exclaimed, "God's will be done," and was immediately removed to prison.

But the sentence was not carried into execution. Applying for a reprieve until the pleasure of the king might be known, it was granted to him, and, on the arrival of Lord Cornbury, he was released. All was then reversed. Cornbury avowed himself the friend of the aristocracy. Atwood, the chief justice, and Weaver, the solicitor general, fled to England. Bayard was reinstated in all honor and estate, by public command, "as if no such trial had been." Nor did the bitterness of party strife continue long to distract the province as it had done. The vices of the needy and profligate adventurer, who was sent to govern New York, taught the people the necessity and the methods of incipient resistance. They forgot their

personal animosities in their resistance of oppression, and ceased to favor the violence, rapacity, and oppression of their governor by divisions amongst themselves. Lord Cornbury, more useful than a better man, destroyed the factions of New York by oppressing them both, until they united in resistance to himself, and the contest soon began, which resulted in the establishment of a free and independent nation.

TRIAL OF MICHAEL CORBETT AND OTHERS

BEFORE A

SPECIAL COURT OF VICE ADMIRALTY,

FOR

MURDER ON THE HIGH SEAS.

BOSTON, 1769.

Of the trial of Michael Corbett and others, seamen on board of a Marblehead brigantine, for the murder of Lieutenant Panton, of his majesty's ship Rose, while attempting to impress them, no authentic and detailed report is known to exist, although the trial caused intense excitement at the time. The following account is principally derived from the newspapers of that day, and a few remarks on the subject in the third volume of Hutchinson's History of Massachusetts Bay.

THE CREW OF THE PITT PACKET.

In the month of April, 1769, a brigantine, the Pitt Packet, of Marblehead, was boarded as she was coming in from Europe, seven leagues from land, by a boat from the Rose, man of war, the Boston station ship, then cruising in order to impress seamen. The seamen of the brigantine, four in number, determined not to be impressed, and, having provided themselves with harpoons and other weapons, they shut themselves up in the fore peak, declaring that they preferred death to slavery, and would sacrifice their lives sooner than be taken out of the ship. Panton, the lieutenant of the Rose, seeing the desperate determination of the men, at first endeavored to persuade them to surrender, and at length promised that he would be content with one of their number. Finding that mild measures were of no avail, he informed them that he should make use of force, and they declared that they would resist unto

death. A pistol, charged with powder, was then fired at them, which burned the face of Michael Corbett, and immediately afterwards another of the number received a shot in the arm. The seamen now became desperate, and repeatedly asserted that they would kill the first man who offered to approach them; and a man sent in by the lieutenant was considerably wounded, and retreated.

Lieutenant Panton then declared that he would lead the way himself. Corbett warned him not to approach, and called God to witness that if he advanced one step towards them, he should instantly die. The lieutenant, who was a resolute and brave officer, coolly remarked that he had seen many a brave fellow in his life, but would take a pinch of snuff and consider the matter, which, having deliberately done, he moved towards the seamen, when Corbett, agreeably to his threat, struck him with a harpoon, which cut the jugular vein. The unfortunate officer gasped out that they had taken his life, and immediately expired. The seamen continued to defend themselves, but having provided themselves with rum, they became intoxicated and were taken to Boston. Their names were Michael Corbett, Pierce Fenning, William Courier, and John Byan.

They were brought up before a special court of vice admiralty, consisting of crown officers, "commissioners for the trial of piracies, robberies, and felonies on the high seas," which court had always proceeded without a jury. But James Otis and John Adams, counsel for the prisoners, insisted upon a trial by jury as a matter of right. The point was elaborately ar-

gued by counsel. Governor Bernard, the president of the court, was inclined to favor the trial by jury, and the king's counsel acceded to it; the only point remaining was the manner of summoning the jurors. But Hutchinson, the chief justice, who was one of the commissioners, being well satisfied that the decision was directly against law, drew up a statement of the case, which convinced the court that they ought to proceed without a jury.[1]

Accordingly, on Tuesday the nineteenth of June, 1769, the trial commenced in Boston, before the following commissioners:—Sir Francis Bernard, governor of Massachusetts; John Wentworth, governor of New Hampshire; Samuel Hood, commodore and commander of his majesty's ships; Thomas Hutchin-

[1] A statute of William III. authorized the court of admiralty to try cases of piracy. The design of the statute was to prevent the trials of piracies by juries in the plantations, at a time when the verdicts of juries had been very partial towards the buccaneers. It was the opinion of the chief justice in the present case, that, according to this statute, the trial must be without a jury. This decision, however correct it might be, was very unpopular at the time, and was one of the many things which served to bring Hutchinson into popular odium. But whatever may be thought of him as a politician, as a judge his character is deserving of the highest commendation. Although a graduate of Harvard College, he was engaged in mercantile pursuits, until he abandoned them for law and politics, but his legal knowledge was highly respectable; he expressed his ideas clearly, and administered the law without fear or favor, according to his knowledge and ability. As a historian, too, his memory must always be regarded with respect. The impartiality and candor, with which he discusses occurrences in which he held a painful position, are worthy of all admiration, while the laborious research, the accuracy, and faithfulness of detail, of which his history gives evidence, entitle it to the high consideration with which it is universally regarded at the present day.

son, lieutenant governor of Massachusetts; Jonathan Warner and George Jaffrey, of his majesty's council in New Hampshire; Robert Auchmuty, judge of the court of vice admiralty for Massachusetts; John Andrews, judge of the court of vice admiralty for Rhode Island; Andrew Oliver, secretary of the province; Robert Trail, collector of the port of Portsmouth; John Nutting, collector of Salem; Joseph Harrison, collector of Boston.[1]

The trial occupied a week. The fact of the homicide was clearly proved; but it appeared that neither the lieutenant nor any of his superior officers were authorized to impress, by any warrant or special authority from the lords of the admiralty; and the court was unanimously of opinion, that the prisoners had a good right to defend themselves, and that they ought to be acquitted of murder, with which they were charged; and that, at common law, the killing would not have amounted to manslaughter.

The prisoners were accordingly discharged, and a midshipman of the Rose was immediately arrested in an action for damages for the wound inflicted in the arm of one of them, and gave bail in the sum of three hundred pounds.

[1] It was with great difficulty that the court was formed, a great part of the gentlemen named in the commission being at a distance; and the inhabitants had the mortification to perceive, that the members of his majesty's council of this province, all of whom had been included in former commissions, were excluded from the present; while not only the council of a neighboring colony, but even *pro tempore* collectors, helped to constitute this court. [Boston Evening Post, July 24, 1769.

TRIAL OF CERTAIN BRITISH SOLDIERS

BEFORE THE

SUPERIOR COURT OF JUDICATURE,

FOR THE MURDER OF

CRISPUS ATTUCKS AND OTHERS.

BOSTON, 1770.

The collision between the British soldiers and certain citizens of Boston on the evening of March 5th, 1770, resulted in three trials of those engaged in it. The first was that of Captain Preston; the second, of the soldiers under his command; and the third, of those who were supposed to have fired from the custom house windows. Of the first and last trials no minutes are known to exist. When that of the soldiers took place, John Hodgson, a short-hand writer, was employed, and from his minutes a very full report of the trial, making a volume of more than two hundred pages, was immediately published. This report, with some additions, was reprinted in 1807, and again in 1824. Before the trials took place, a work was published, of which the following is the title page: "A Short Narrative of the Horrid Massacre in Boston, perpetrated in the evening of the fifth day of March, 1770, by soldiers of the 29th regiment; which, with the 14th regiment, were then quartered there; with some Observations on the State of Things prior to that Catastrophe. Printed by order of the Town of Boston, and sold by Edes & Gill, in Queen street, and T. & J. Fleet, in Cornhill, 1770." In the appendix to this work, there is a large number of depositions taken *in perpetuam* relating to the subject. This publication was intended principally for the English market, and the work was sent there by a vessel hired by the town for the purpose. To several of the copies there were appended written certificates of the justices before whom the depositions were taken, that the printed copy annexed was accurate, and also of Lieutenant Governor Hutchinson, under the seal of the province, that the persons before whom the depositions were sworn were authorized to administer oaths. A copy of this work, with the certificates appended, was presented to Bowdoin College by James Bowdoin, and is in the library of that institution. The following account of these trials is entitled the "Boston Massacre," not from any inherent propriety in that title, but because the transaction was so called at the time of its occurrence, and is generally known by that name at the present day.

THE BOSTON MASSACRE.

On the evening of the fifth of March, 1770, a party of soldiers, of his Britannic majesty's twenty-ninth regiment of foot, fired upon a collection of citizens of Boston, and caused the death of five individuals. The causes of this occurrence, denominated in the language of that day the "Boston massacre," are to be found in the difficulties then existing between Great Britain and the American colonies, and which were every day increasing in consequence.

Quartering soldiers upon the colonies was never a popular measure in America. The citizens of Boston, in particular, resented it from the first; and the most sagacious among them predicted the consequences, which must inevitably result from this mistaken policy on the part of ministers. As early as May, 1769, a committee of the general court remonstrated to the governor, that an armament by sea and land, investing Boston, and a military guard

with cannon pointed at the door of the state house, were inconsistent with that dignity and freedom with which they had a right to deliberate, consult, and determine. In June of the same year, the house passed resolves, by which they declared, among other things, that "the establishment of a standing army in the colony, in time of peace, was an invasion of natural rights; that a standing army was not known as a part of the British constitution; and that sending an armed force into the colony under pretence of assisting the civil authority was highly dangerous to the people, unprecedented and unconstitutional."

The policy of government was not changed, however; and the natural consequences of quartering a foreign soldiery upon an unwilling and spirited people soon became apparent. Outrages had been committed by some of the soldiers, which were promptly resented by the citizens, and quarrels between them were of frequent occurrence. Every day new circumstances arose which augmented the animosity, and there were not wanting some fiery spirits, who, bitterly resenting the indignity of having soldiers quartered upon the town, were continually exciting the people to quarrel with the troops.

At length, a private of the twenty-ninth regiment, being provoked by insulting words from one of the workmen at a ropewalk in the town, resented it, and was overpowered. He soon returned with some soldiers, between whom and the ropemakers an affray ensued, which terminated in the defeat of the former, and the wounding of one of their number in a very dangerous manner. This occurrence gave rise to

great excitement, and a general expectation of a serious affray between the citizens and the soldiers.

The commanding officer of the regiment made a formal complaint on the same day, to the lieutenant governor, of the frequent abuses offered to his men, and, in particular, of the conduct of the ropemakers, on the occasion just referred to. On Monday, March fifth, the matter was laid before the council, when several of that body expressed a decided opinion, that the people never would be satisfied with any thing short of the removal of the troops. The council could not agree upon any advice for the lieutenant governor, although there was a strong apprehension of further trouble.

Early in the evening of that day, it became apparent that an unusual excitement prevailed in Boston. Clusters of citizens were observed in earnest conference in various quarters of the town, and parties of soldiers were also driving about as if they had something more than usual upon their minds. About eight o'clock one of the bells was rung as if for fire, and soon after large bands of men were seen in motion, hurrying forward with clubs in their hands, and uttering the fiercest imprecations against the soldiers. An attack was soon made by the mob in Dock square upon some soldiers belonging to Murray's barracks,[1] but the latter, after some difficulty, were

[1] Murray's barracks were in Brattle street, in the buildings directly opposite the little alley which leads from the bottom of Cornhill. A sentinel was usually stationed in this alley, (at that day called Boylston's alley,) and on the evening referred to, a few young men, who were disposed to go through the alley, observed

shut up in the barracks by their officers, the mob following them to the gate and provoking them by the most abusive epithets. The rioters were then addressed by "a tall large man in a red cloak and white wig," and immediately rushed to King street, now State street. Meanwhile, the sentry before the custom house, in that street, was attacked while on duty. He loaded his gun, and retreated up the steps; but the people pressed upon him with bitter imprecations, and he called on the main guard, within hearing, for protection.[1] Captain Preston, the officer of the day, sent a corporal and six men to protect the sentinel, and followed them himself. The mob had now received a great accession of numbers, and the soldiers on their way were hooted at, and pelted with snow balls, ice and sticks. They were then ordered to load. After they had taken their station before the sentinel at the custom house, and were pushing off the people, one of them received a blow with a club, which brought him to the ground. Rising immediately he fired, and the rest, with one or two exceptions, followed his example. Three men were instantly killed,

the soldier brandishing his sword against the wall, and striking fire for his own amusement. They offered to pass him, and were challenged, but persisted in their attempt, and one of them received a slight wound in the head. A crowd soon collected, and an attack was made on Murray's barracks. *Snow's History of Boston.*

[1] The custom house stood at the corner of State and Exchange (then Royal Exchange lane) streets, on the spot where the Union Bank building now stands. On the opposite corner of Exchange street the Royal Exchange tavern stood. The main guard was regularly stationed near the head of State street, directly opposite the door on the south side of the old state house, (then called the town house.) The twenty-ninth regiment was quartered in Water and Atkinson streets.

five were very dangerously wounded, and a few slightly. The citizens fled precipitately from the scene, and the soldiers withdrew to the main guard, which was strengthened by additional companies. Intense excitement immediately prevailed throughout all classes of citizens. The streets were filled with people, and there was danger of a general and bloody conflict. But by the judicious efforts of the lieutenant governor, the officers, and many respectable citizens, quiet was restored, and the great body of the people retired to their homes. A court, composed of justices of the peace, was immediately held, and search was made for Captain Preston. After several hours he surrendered himself, and was committed to prison, at three o'clock in the morning, on a charge of murder. The soldiers also surrendered, and were committed to prison on the next day.

The funeral solemnities of those who were killed by the fire of the soldiers were conducted with great pomp and splendor. Crispus Attucks, a mulatto, and James Caldwell, who were strangers in Boston, were borne from Faneuil Hall, Samuel Maverick, a youth of seventeen, from his mother's house in Union street, and Samuel Gray, from his brother's, in Royal Exchange lane.[1] The four hearses formed a junction in King street, at the place where the deceased fell, and thence an immense procession marched in columns of six deep through the main street to the central (Granary) burying ground, where the four bodies were deposited in one tomb, amidst the solemn

[1] Patrick Carr was still alive, although mortally wounded. He died in a few days afterwards.

tolling of all the bells in Boston and the neighboring towns.

As might be expected, this tragedy "wrought the whole people of Massachusetts, and above all, the inhabitants of Boston, to the highest pitch of rage and indignation. The populace breathed only vengeance. Even minds better instructed, and of higher principles than the multitude, in the excitement of the moment, could not endure the doctrine, that it was possible for an armed soldiery to fire upon and kill unarmed citizens, and commit a crime less than murder. Political animosity and natural antipathy to troops stationed in the metropolis, sharpened this vindictive spirit. The friends of the government were either silent, or only expressed regret and lamentation at the event. The friends of freedom were loud in their indignation, and clamorous for that justice which declares that blood shall be the penalty of blood."

Meanwhile there had been several meetings of the people, and a committee was appointed, which proceeded to the examination of witnesses, "in order to show to the world, and especially to the friends of the colonies in England, that there were just grounds for insisting upon the removal of the troops." A narrative was also given of the transaction, which was adopted by the town and was widely distributed, differing materially from the facts as subsequently proved, and calculated to increase the excitement. Under such circumstances, the British soldiers were to be tried for their lives, and serious fears were entertained, not only by their friends but by the candid

and moderate of all parties, that they would not be dealt with by even-handed justice.

But among the friends of freedom there were men who viewed this matter in the calm and rational light of truth and justice. Anxious for the honor of the town, doubly anxious for the cause of humanity, they felt an earnest desire that justice should not fall a sacrifice in her own temple. Of these John Adams and Josiah Quincy, junior, deserve most honorable mention. Sympathizing most deeply with the mass of their fellow citizens in their hatred of the instruments of their oppressors, and in their detestation of the principles they had been sent hither to maintain, no men had more openly or pathetically appealed to their fellow citizens, or had more studiously excited their resentment, both in the gazettes and in Faneuil Hall, against the troops and their employers. What, then, must have been their surprise, when Captain Preston solicited their professional services in his own behalf, and in that of the soldiers! To understand the difficulty of their situation, it is necessary to realize the exasperated state of public feeling. The spirit of revenge glowed with a fervor almost universal. On the one hand, were the obligations of humanity, official duty, and the strong desire that justice should be done; on the other, the confidence of their political friends, popularity, and that general affection which their public course had attained for them in so remarkable a degree, among their fellow citizens, were to be hazarded. After deliberation and consultation with each other and their friends, both of these patriots yielded all personal considerations to

the higher obligations of humanity and official duty. They braved the fury of the moment, and interposed their learning, talents, and well earned influence, to that torrent of passions, which, for a time, threatened to bear down the landmarks of justice.[1]

The regular time for holding the superior court was the next week after the tragedy in Boston. The grand jury found bills of indictment against Captain Preston and his eight soldiers for wilful murder, but the court thought fit to continue the trials to the next term, when the people would probably be more free from excitement, and a more dispassionate hearing might be expected. But it is related, that a considerable number of the most active persons, in all public measures of the town, having dined together, went in a body from table to the superior court, then sitting, and one of their number, in behalf of the town, pressed the bringing on of the trial at the same term with so much spirit, that the judges did not think it advisable to abide by their own order, but appointed a day for the trials, and adjourned the court for that purpose. They did not take place,

[1] Memoirs of Josiah Quincy, Jr., p. 32. Hutchinson insinuates, that the counsel of the soldiers were influenced by sordid motives. He says: "Captain Preston had been well advised to retain two gentlemen of the law, who were strongly attached to the cause of liberty, *and to stick at no reasonable fees for that purpose.*" It is surely no discredit to lawyers, under any circumstances, to receive compensation for their services. But in the present case no amount of fees could compensate these popular leaders for assuming the defence of an act so universally condemned. Their motives were the hope of preventing a great wrong; their reward, the consciousness of doing their duty.

however, until the next term, several months afterwards.

The case of Captain Thomas Preston first came on for trial before the superior court of judicature, court of assize and general gaol delivery, at Boston, on the twenty-fourth of October, 1770. There were five indictments against him, in which he was charged with being present, aiding, and abetting the murder of Samuel Maverick, Samuel Gray, Crispus Attucks, James Caldwell, and Patrick Carr, on the evening of the fifth of March.[1] A few witnesses testified that he ordered his men to fire, but their evidence was encountered by that of several other witnesses, who stood near to him, and were conversing with him at a different place from that which the witnesses for the crown swore he was in; and the judges, in summing up the evidence to the jury, were unanimous in their opinion, that he did not order his men to fire, but if he did, they were of opinion, that, from the evidence of many other witnesses, the assault, both on the officer and men while upon duty, was so violent, that the homicide could not amount even to manslaughter, but must be considered as excusable homicide.[2] The jury soon agreed upon a verdict of not guilty.

[1] Records of the court. The names of the jury were, William Frobisher, Joseph Trescott, Neal McIntire, Thomas Mayo, Josiah Sprague, Joseph Guild, Jonathan Parker, Gilbert Deblois, Philip Dumaresque, William Hill, William Wait Wallis, and James Barrick.

[2] Hutchinson, who relates this, probably states the instructions of the court to the jury quite as strongly in favor of the accused as they in truth were.

The trial occupied about six days. In the course of it, Mr. Quincy pushed the examination and cross-examination of the witnesses to such an extent, that Mr. Adams, in order to check it, told him that if he would not desist, he should decline to have any thing further to do in the cause. The prisoner and his friends were alarmed, and consulted about engaging other counsel; but Mr. Adams, sensible that there was sufficient evidence to obtain a favorable verdict from an impartial jury, had no intention to abandon his client; he only felt for the honor of the town, which, he apprehended would suffer yet more, if the witnesses were examined too closely and particularly, by which means more truth would be drawn from them than had an immediate connection with the soldiers' firing, by or without the orders of the captain. When the trial was ending, Judge Lynde, toward the close of his charge said: "Happy am I to find, after such strict examination, the conduct of the prisoner appear in so fair a light; yet I feel myself deeply affected, that this affair turns out so much to the disgrace of every person concerned against him, and so much to the shame of the town in general." After his acquittal, Captain Preston retired to the castle, and remained there until he sailed for England.[1]

The trial of the eight soldiers, William Wemms, James Hartegan, William McCauley, Hugh White, Matthew Killroy, William Warren, John Carroll, and

[1] Gordon's History of the American Revolution, i. 193. Of this trial it is not known that any minutes exist.

Hugh Montgomery, commenced on Saturday, November twelfth, 1770, before the superior court.[1] There were five indictments against the prisoners, in which they were charged both as principals and accessories with the murder of the five citizens who were killed. The prosecution was conducted by Robert

[1] The justices of the court who were present were Benjamin Lynde, John Cushing, Peter Oliver and Edmund Trowbridge. Hutchinson, the historian, was at that time the chief justice, but had ceased to perform the duties of the office. Lynde, who presided on this occasion, was born in Salem in 1700. He came upon the bench in 1745; when Hutchinson was made governor, Lynde succeeded him as chief justice. He resigned the office when he was seventy-two years old, and died at the age of eighty.

Cushing was born in Scituate in 1695, and was appointed a judge in 1747. He resigned his office in 1771, and died in 1778, aged eighty-two years.

Oliver was a native of Boston, born in 1712. He was graduated at Cambridge in 1730, but never studied any profession. He was raised to the superior court, however, after having been a judge of the court of common pleas several years, and was appointed chief justice on the resignation of Judge Lynde in 1772. From his political predilections he became extremely obnoxious to the people. Articles of impeachment were once drawn up against him, but he was protected by the governor. He left the province in 1776, when the troops evacuated Boston, whence he went to England and died in Birmingham in 1791, aged seventy-nine. He was a thorough royalist, and, on leaving the country, fully reciprocated with the people, the hatred with which they regarded him. He was honored with a degree of LL. D. by the university of Oxford. His family and that of Copley, the painter, father of Lord Lyndhurst, were connected by marriage.

Trowbridge, the remaining judge, was one of the most learned lawyers that ever sat on the bench in Massachusetts. He was born in Newton in 1708, and was graduated at Cambridge at the age of nineteen. He did not lose the popular favor, although inclined to the prerogative party in politics. He remained in the country unmolested by the revolution, and retained the respect of the public through life; but he retired to private life and died in 1793. His memory is still held in respect.

Treat Paine and Samuel Quincy. John Adams, Josiah Quincy, and Sampson Salter Blowers[1] appeared as counsel for the prisoners. When the jury was impaneled, ten of the persons returned by the sheriff were challenged peremptorily by the prisoners, and eleven were challenged for cause, and all of them were set aside. Every juryman from the town of Boston being challenged for cause and set aside, there was not an inhabitant of that town on the jury, which was composed of the following individuals: — Joseph Mayo, foreman, and Nathaniel Davis, of Roxbury; Abraham Wheeler and Edward Peirce, of Dorchester; Josiah Thayer, of Braintree; Benjamin Fisher, of Dedham; Samuel Davenport and Joseph Haughton, of Milton; Consider Atherton, of Stoughton; Jacob Cushing, Jr., Josiah Lane, and Jonathan Burr, of Hingham.

The case was opened for the crown by Samuel Quincy, and a large number of witnesses were called to prove the allegations in the indictment. They fully identified the prisoners as the soldiers who fired on the people; but the proof was not very precise as to the actual effect of each soldier's firing, with the exception of Killroy and Montgomery. In regard to the former, a witness testified that he saw him among the soldiers. Samuel Gray was standing near the witness, and after one gun had been fired, the witness cried out to Killroy not to fire, but he imme-

[1] He was graduated at Cambridge in 1763, and was made a barrister in 1773 after this trial. Being a royalist he left the province at the revolution, and was subsequently, in 1798, made chief justice of the supreme court of Nova Scotia.

diately fired, and Gray, who was taking no part in the disturbance, fell dead. It was also testified, that Killroy had previously said he would never miss an opportunity, when he had one, to fire on the inhabitants, and that he had wished for an opportunity ever since he landed. It also appeared, that he was one of the soldiers who were engaged in the affray at the ropewalk a few days before the affair in King street. It was also in evidence, that his bayonet was bloody the next morning after the affray. In regard to Montgomery it was testified, that he was the first person who fired. He was struck a violent blow, which brought him to the ground, and his gun flew out of his hand. He immediately recovered it, and instantly fired. A witness declared that he thought he pointed towards Attucks, who fell with two others.

Witnesses were also introduced to show the origin of the affray, and to prove that the blame was attributable to the soldiers, and that the circumstances were not such as to justify them in firing. Their testimony was as follows: —

Joseph Hiller. — I was in King street at the time the soldiers fired at the people on the fifth of March. I was at the north end of the town when the bells rung, and when I came to the middle of the town, I was told there was no fire, but a rumpus betwixt the soldiers and the inhabitants. I passed on, the bells still ringing. When I came to Dock square, there were some persons there, who told me it was dangerous to go up; they seemed to be like people that were afraid to pass, because of the danger; others

were going up; I went up, and when I got past the alley, the street was very clear of people; I hardly saw any body. I came to the town-house, and saw about thirty lads. I have often seen more collected for their diversion. I saw the sentry upon the steps of the custom-house door; I heard him say nothing, but he had his gun waving, as if it was to defend himself, or to exasperate the people. I thought to speak to him, but thinking he might insult me, I declined; I began to go away, and met the party of soldiers coming down; that made me stop, because when they got to the custom-house there was a noise something like what they call cheers, and the people went more to the middle of the street. After the soldiers had passed through them, I went down again; as I passed before them there were very few people. I passed without the people, and inclined more to the custom-house, the greater part of the soldiers being full to my view. I was walking right before them. They had their guns rested on their hips; when I passed the last man on the left, the first gun was fired from the right. I should think the time might be twenty seconds before the first gun was fired from the time they formed. In a short time there was another, and then very soon another, and then there was a short space of time again, before the last guns were fired. A little boy ran along and cried fire! fire! fire! as people generally do when there is a fire; a soldier pointed his gun at him and fired, but did not hit him; he was the last but one on the left. I did not mind the first gun, thinking it was only powder to scare the people: when the next

were fired, they were scattering. After the firing ceased, a little boy came and told us some persons were killed. I saw them lying in the street. I did not imagine it was anybody killed, but supposed that they had been scared and run away, and left their great coats behind them. I saw nothing like an attack that could produce any such consequences. I went to look at the mulatto man, and heard a noise like the cocking of firelocks, but an officer passed before them and said, "do not fire on the inhabitants." The street was in a manner clear; it was as hush as at twelve o'clock at night; the noise of the cocking seemed to come from the right, and passed on to the left.

"How many guns were fired?"

"Six was the least, and one missed fire."

"How many soldiers were there?"

"Six or eight."

"Did you see any blows given, or any thing thrown?"

"No, and I was there the whole time."

"Did you see anybody strike the soldiers' guns?"

"No."

"Did you hear any huzzaing when the soldiers came down?"

"There seemed to be a huzza, but when I went down and passed them, they were very still. There was shouting when the soldiers first went down, and it was not two minutes before they fired."

Benjamin Burdick — a barber. I was in King street on the evening of the fifth of March. When I first came there, I went immediately up to one of

the soldiers, which I take to be that man who is bald on the head (pointing to Montgomery); I asked him if any of the soldiers were loaded, he said, "yes;" I asked him if they were going to fire, he said, "yes, by the eternal God;" and pushed at me with his bayonet, which I put by with a Highland broad sword which was in my hand. A short time before this, a young man who boarded with me told me that several of the soldiers had a spite at him, and he believed he was in danger. I had seen two of them about my house, one of whom was hearkening at the window. I saw him again near the house, and asked him what he was after: "Was it not you," says I, "that was hearkening at my window last night?" "What if it was?" he said. I told him to march off, and he damned me, at which I beat him till he had enough of it, and he then went off. The reason of my carrying a sword was, the soldiers spied the young man in the lane and dogged him, for he had been very active in the affray at the ropewalks: they said they would sometime or other have satisfaction, and I considered myself liable to be insulted likewise. When alarmed by the cry of fire, and I had got below the house, my wife called after me, and said "it is not fire, it is an affray in King street, if you are going, take this," so I took it, and ran down, and I asked the soldier what I just now told you. I knocked the bayonet with a sword, which I had in my hand; another pushed at me, and I struck his gun; my face was now towards the soldiers. I heard the first gun go off, and then the second gun went off. As I was looking to see if

anybody was killed, I saw the tall man standing in a line with me. I saw him fall.

"How long had the bells been ringing before you came from home?"

"I thought it was nine o'clock, and did not think any thing else, till somebody cried fire."

"Did you strike before the firing?"

"Yes."

"Did you strike as hard as you could?"

"Yes, and hit the lock of his gun, and if I had struck a little lower, I should have left a mark that I could have sworn to."

"Was the sword in your hand drawn?"

"I drew it when the soldier pushed at me, and struck at him as I have mentioned."

"Which gun went off first?"

"I took it to be the right hand man."

"Where did that soldier you struck at stand?"

"I believe the fourth or fifth man from the corner of Exchange lane."

"How many soldiers were there?"

"I did not count them, it appeared to me there were six or eight."

"The man that said he would fire by the eternal God, where did he stand?"

"He was about the middle."

"Was you there when the first gun was fired?"

"Yes."

"What was the immediate occasion of that?"

"I do not know, I had only walked over from Quaker lane till I came to the soldiers, that was all the time I had."

"Did you see anything extraordinary to induce them to fire that gun?"

"Nothing but a short stick was thrown, which seemed to go clear over all their heads. I heard a clattering of their guns, but what was the occasion of it I do not know."

"Might not their iron ramrods occasion it?"

"No, I suppose they knocked one gun against another in taking their places. When the mulatto man was dead, I went up and met Dr. Gardner and Mr. Brindley. I asked them to come and see the mulatto, and as we stooped to take up the man, the soldiers presented their arms again, as if they had been going to fire, Captain Preston came, pushed up their guns, and said, 'stop firing, do not fire.' I went to them to see if I could know their faces again; Captain Preston looked out between two of them, and spoke to me, which took off my attention from them."

"From where was that stick thrown?"

"From Royal Exchange lane, and it flew over their heads almost as high as the sign."

"What did you take to be the occasion of the soldier's answer to you?"

"I do not know, unless he was affronted at my asking the question of him."

"Did you see anybody strike the soldiers before you struck with the sword?"

"No, I had not time."

"What distance of time was there between the first and second gun?"

"A very short space, I cannot say exactly."

Bartholomew Kneeland — a merchant. On the fifth of March, I heard the bells ring after nine, and went to the front door, followed by my sister and two others of the family; I stood there about five minutes, and saw a number of soldiers, about ten or a dozen, coming towards the town pump; they seemed to make a noise, and one of them got nearly opposite to me, and hallooed, "damn you, what do you do there?" I made him no answer, he came up to me, and pointed his naked bayonet at my breast, and held it there some time, and told me to get in; I told him to go along; he went towards the post office.

"Do you know what regiment he belonged to?"

"To the twenty-ninth."

"Did he bid you get in when he asked you what you did there?"

"Yes. In a little while I heard a volley of small arms, which I took to be in King street."

Nathaniel Thayer — sealer of wood. On the evening of the fifth of March I heard a very great noise, and my wife said, "you had better go to the door and see what the matter is." I went, and saw about twenty people coming through Boylston's alley. There was a terrible swearing, and they had clubs and swords, and one thing and another; there came seven soldiers from the main guard without any coats on: driving along, swearing, cursing and damning like wild creatures, saying, "where are they? Cut them to pieces, slay them all." They came up to my door; I shut my door and went in; they went round the back lane to King street; this was after nine, before any guns were fired.

Nathaniel Appleton—a merchant. On the evening of the fifth of March, a little after nine, as I was sitting in my house, I heard a considerable noise in the street. I went to the door, and found the chief of the noise was at the bottom of the street. I inquired the reason, and was told the soldiers and inhabitants were fighting; I waited at the door a minute or two; people were running down in twos and threes at a time; at length the noise subsided, and seemed to be down by Dock square; hearing the bells ring and the cry of fire, I asked where it was? I was answered there was none, but the inhabitants and soldiers were fighting. There soon came a party of soldiers from the southward, ten or twelve I think; they had short clothes. I think, I saw some white sleeves amongst them, with bayonets in their hands, but I apprehended no danger from them; I stood on the step of the door, they appeared to be pushing right down the street. When they got a few rods from the door, their course began to bend towards us; still I apprehended nothing but that they were coming to walk on the side of the way; then they lifted up their weapons, and I began to apprehend danger; they said something, I do not know what it was, but I went in as fast as I could, and shut the door immediately. They were within half a foot of it; had it been open a second longer they would have had the command of the door; but I was too quick for them and bolted my door, went up chamber, looked out of the window, and saw people flying here and there like pigeons, and the soldiers running about like mad men in a fury, till they got to the bottom of the street.

John Appleton—a young lad, son of Nathaniel Appleton. About nine o'clock I was sent on an errand into King street. I heard a noise and ran out of the shop where I could see what was the matter. I went into the middle of the street, and saw some talking to the sentry; I thought they were going to quarrel, and came away. Coming to Jenkins's Alley, my brother with me, there came out about twenty soldiers with cutlasses in their hands; my brother fell and they ran past him, and were going to kill me; I said, "soldiers, spare my life," one of them said, "no, damn you, we will kill you all;" he lifted his cutlass and struck at my head, but I dodged and got the blow on my shoulder. I believe the cutlass was not drawn, for it rattled on my shoulder as if it had been sheathed.

Thomas Marshall[1]—a tailor. I was at Colonel Jackson's a few minutes after nine on the fifth of March. When I came out into Dock square, all was quiet; I saw no persons in the whole square. I came up Royal Exchange lane; I saw nobody there. I saw the sentry at the head of it in peace and quietness, nobody troubling. I never saw King street more quiet in my life. I went into my house, where was a kinsman of mine; I asked him how he did, and while I was speaking, the young man in the shop knocked for me. I went into the shop, and in half a minute, I heard the cry of murder once or twice. "There is mischief," said I, "at a distance;" "so there is," said he. I opened the front door to see; but I saw

[1] Colonel Marshall lived in the next house to the custom house.

nobody. I heard a noise, which seemed to come from Rowe's barracks. I stopped a little space, and the first I saw enter King street was a party from the main guard, ten or twelve of whom came rushing out violently, their arms glittering by the moonlight, and crying out "damn them where are they, by Jesus let them come." Some of them turned into Pudding lane, and some went by the townhouse steps; I went in and told my family to keep themselves easy, for there was no disturbance near the house. I went to the door again, and saw a party about the head of Quaker lane; they used much the same expressions as the aforesaid party, and cried fire. They passed over the way, and the shade of the moon-light hindered me from seeing whether they went down Royal Exchange lane or up towards the town house. Something strikes my mind, I am not positive now, but I think it was that night, there were a few boys round the sentry. I went and said, "boys, you have no business with the sentry, go off," and they went away. I have often seen boys with the sentry, and often heard words. The bells were then ringing, and the people began to collect, as they do at the cry of fire, and I thought it was fire. I had a mind to get my staff and go out, but I had a reluctance, because I had been warned not to go out that night; but while the people were collecting, I came to the door, and saw them gathering thick from all quarters, forty, fifty, or sixty. When the party came down, I thought it was no more than I had seen every day; I thought they had come to relieve the sentry; they seemed to be in a posture of defence, and came

through the people. I saw no opposition. When they came up, they passed out of the moonlight into the dark, so that I could not see them, but I wondered to find them tarry so long. I heard a gun go off, and thought it was an accident, but in a little time another gun went off, and a third and a fourth, pretty quick, and then the fifth. There seemed to be a small stop in their firing; I then had no concern, but before the smoke was well away, I saw the people dead on the ground. I saw no opposition when they were drawn up, the people were not near them; what opposition might be at the lane I could not perceive, because the box covered that from my view.

Nathaniel Fosdick — a hatter. On the evening of the fifth of March, at the cry of fire, I came out of my house, and saw the people running down town. I followed them; when I got by the town house, I saw some going down King street; I went down also to the guard house; I saw a number of the soldiers running; I asked where the fire was; nobody answered me. I went down to the middle of King street, and while I stood there, was pushed from behind with a bayonet. I turned round and saw a party of soldiers coming down. I asked one the reason of his pushing at me; he damned my blood, and bade me stand out of their way. I said I would not, I was doing harm to no man, and would not stand aside for any one; they passed me some on one side, some on the other. They came to the sentry box, faced round, and formed a circle. I spoke to some of the inhabitants to speak to Preston, to know what the matter was; somebody spoke to him, but what was said, I do not

know. I saw Preston fall back betwixt the fourth and fifth man; the word was given to fire and immediately the right hand man fired; after that I pushed in towards them, and they ran a bayonet at me and wounded me in the arm. I was pushed twice in the arm by two different bayonets. I knocked off one of them with my stick; with the other I was wounded in my breast.

"Were any blows given before the guns were fired?"

"No, not where I stood, and I saw two thirds of the soldiers."

"Did you see any insults offered the soldiers?"

"No, none at all."

After the evidence for the crown was closed, Samuel Quincy,[1] of counsel for the crown, addressed the court and jury at length upon the facts as proved, which he recapitulated with great particularity, and laid down the law which he considered to be applicable to the case. The defence was then opened as follows, by

JOSIAH QUINCY, JR.

May it please your Honors, and you, Gentlemen of the Jury,

The prisoners at the bar stand indicted for the murder of five of his majesty's liege subjects, as set

[1] He was an elder brother of Josiah Quincy, jr., and an intimate friend of John Adams. He was the last solicitor general of the province, before the revolution. He became a royalist, through jealousy, it is said, of his younger brother, who rose to higher distinction than himself. He left the country at the revolution and went to Antigua, where he was appointed king's attorney, and held the office till his death in 1789.

forth in the several indictments, which have been read to you. The persons slain, those indictments set forth, as "being in the peace of God, and our lord the king," at the time of the mortal wounds given.

To these indictments, the prisoners have severally pleaded not guilty, and for their trial have put themselves on God and their country, which country you are: and by their pleas, thus severally pleaded, they are to stand, or fall, according to the evidence which shall respectively apply to them.

By their plea of not guilty, they throw the burden of proof, as to the fact of killing, upon the crown; but, upon that being proved, the matter they allege to justify, excuse, or extenuate, must be adduced by them, and supported by legal evidence. The truth of the facts they may thus allege, it is your sole and undoubted province to determine; but upon the supposition that those facts shall appear to your satisfaction, in the manner we allege, the grand question then to be determined will be, whether such matters, so proved, do, in law, extenuate, excuse, or justify. The decision of this question belongs to another department, namely, the court. This is law, so well known, and acknowledged, that I shall not now detain you by a recital of authorities, but only refer you to Foster's Crown Law, where this point is treated with precision, and fixed beyond controversy. It may not be amiss, however, to assure you, that as certain as the cognizance of facts is within your jurisdiction, so certain does the law, resulting from these facts, in cases of the present kind, seem to reside

solely in the court: unless cases, where juries, under direction of the court, give general verdicts, may be denominated exceptions.

In the case now before us, it will not be contested, that five persons were unfortunately killed, at the time the indictments charge; and this case will naturally enough divide itself into three main divisions of inquiry.

First. Whether any homicide was committed?

Secondly. By whom was it committed?

Thirdly. Is there any thing appearing in evidence, which will justify, excuse, or extenuate such homicide, by reducing it to that species of offence called manslaughter?

Before we enter upon these inquiries, permit me, gentlemen, to remind you of the importance of this trial, as it relates to the prisoners. It is for their lives! If we consider the number of persons, now on trial, joined with many other circumstances which might be mentioned, it is by far the most important, this country ever saw. Remember the ties you are under to the prisoners, and even to yourselves. The eyes of all are upon you. Patience in hearing this cause is an essential requisite, candor and caution are no less essential. It is tedious and painful to attend a trial of such length; but remember the time which has been taken up by the crown in the opening. By every bond of humanity and justice, we claim an equal indulgence; nay, it is of high importance to your country, that nothing should appear on this trial to impeach our justice, or stain our humanity.

And here let me remind you of a notion, which has certainly been too prevalent, and guard you against its baneful influence. An opinion has been entertained by many among us, that the life of a soldier was of very little value; of much less value than others of the community. The law, gentlemen, knows no such distinction; the life of a soldier is viewed, by the equal eye of the law, as estimable as the life of any other citizen.

I cannot in any other way account for what I mention, than by supposing that the indigence and poverty of a soldier, the toils of his life, the severity of discipline to which he is exposed, the precarious tenure by which he is generally thought to hold his life, in the summary decisions of a court-martial, have conspired to propagate a sentiment of this kind; but a little attention to the human heart will dissipate such a notion.

The soldier takes his choice, like all others, of his course of life: he has an equal right, with you, or me, so to do. It is best we should not all think alike. Habit makes all things agreeable; what at first was irksome, soon becomes pleasing. But does experience teach, that misery begets in general a hatred of life! By no means: we all reluct at death; we long for one short space more; we grasp with anxious solicitude even after a wretched existence. God and nature have implanted this love of life. Expel, therefore, from your breasts an opinion so unwarrantable by any law, human or divine; let not any thing so injurious to the prisoners, who value life as much as you, let not any thing so repugnant

to all justice, have influence in this trial. The reputation of the country depends much on your conduct, gentlemen; and, may I not add, justice calls aloud for candor in hearing, and impartiality in deciding, this cause, which has, perhaps, too much engrossed our affections; and, I speak for one, too much excited our passions.

The law, by which the prisoners are to be tried, is a law of mercy, a law applying to us all, a law, Blackstone will tell us, "founded in principles that are permanent, uniform, and universal, always conformable to the feelings of humanity, and the indelible rights of mankind." How ought we all, who are to bear a part in this day, to aim at a strict adherence to the principles of this law; how ought we all to aim at utterly eradicating every undue bias of the judgment; a bias subversive of all justice and humanity!

Another opinion, equally foreign to truth and law, has been adopted by many. It has been thought, that no possible case could happen, in which a soldier could fire, without the aid of a civil magistrate. This is a great mistake, — a very unhappy mistake indeed! one, I am afraid, that had its influence on the fatal night, which we all lament. The law, as to the present point, puts the citizen and soldier under equal restraint. What will justify and mitigate the action of the one, will do the same to the other. Let us bear this invariably in mind, in examining the evidence. But before we proceed to this examination, let us take a transient view of some occurrences, preceding, and subsequent to, the melancholy fifth of March.

About some five or six years ago, it is well known, certain measures were adopted by the British parliament, which gave a general alarm to this continent. Measures were alternately taken in Great Britain, that awakened jealousy, resentment, fortitude, and vigilance. Affairs continued long fluctuating. A sentiment universally prevailed, that our dearest rights were invaded. It is not our business here to inquire touching these delicate points. These are concernments, which, however interesting or important in themselves, we must keep far away from us, when in a court of law. It poisons justice, when politics tincture its current.

I need not inform you, how the tide rose, as we were advancing towards the present times. The general attention became more and more roused, — people became more and more alike in opinion and practice. A vast majority thought all that was dear was at stake, — sentiments of liberty, — property, — ignominious bondage, — all conspire to increase the ferment. At this period the troops land. Let us here pause, and view the citizen, and the soldier.

The causes of grievance being thus spread far and wide, the inhabitants viewed the soldiery as called in, foreign from their prime institution, to force obedience to acts, which were, in general, deemed subversive of natural as well as constitutional freedom. With regard to the universal prevalence of ideas of this kind, it does not fall within our present plan, to give you direct, positive evidence. It would be too foreign to the present issue, though pertinent enough, when considered as a clue to springs and motives of

action, and as an additional aid to form a just judgment in our present inquiry. You, gentlemen, who come from the body of the country, are presumed to know these facts, if they are true; nay, their notoriety must be such, provided I am not mistaken in my conjecture, that the justness of my observation on this matter must be certainly confirmed by your own experience. I presume not in this, or any other matter of fact, to prescribe to you; if these sentiments are wrong, they have no influence; if right, they ought certainly to have their due weight.

I say, gentlemen, and appeal to you for the truth of what I say, that many on this continent viewed their chains as already forged; they saw fetters as prepared; they beheld the soldiers as fastening, and riveting for ages, the shackles of their bondage. With the justness of these apprehensions, you and I have nothing to do in this place. Disquisitions of this sort are for the senate, and the chamber of council, they are for statesmen and politicians, who take a latitude in thoughts and action; but we, gentlemen, are confined in our excursions, by the rigid rules of law. Upon the real, actual existence of these apprehensions, in the community, we may judge; they are facts falling properly within our cognizance, and hitherto may we go, but no farther. It is my duty, and I ought to impress it on your minds; and, you, gentlemen, ought to retain the impression. You are to determine on the facts coming to your knowledge; you are to think, judge, and act, as jurymen, and not as statesmen.

Matters being thus circumstanced, what might be

expected? No room was left for cordiality and friendship. Discontent was seated on almost every brow. Instead of that hospitality, which the soldier thought himself entitled to, scorn, contempt, and silent murmurs were his reception. Almost every countenance lowered with a discontented gloom, and scarce an eye but flashed indignant fire. Turn and contemplate the camp. Do we find a more favorable appearance? The soldier had his feelings, his sentiments, and his characteristic passions also. The constitution of our government has provided a stimulus for his affections: the pride of conscious virtue, the sense of valor, the point of honor. The law had taught him to think favorably of himself; had taught him to consider himself as peculiarly appointed for the safeguard and defence of his country. He had heard, that he put not off the citizen, when he entered the camp; but because he was a citizen, and wished to continue so, he made himself, for awhile, a soldier. How stinging was it to be stigmatized as the instrument of tyranny and oppression! How exasperating to be viewed as aiding to inthrall his country! He felt his heart glow with an ardor, which he took for a love of liberty and his country, and had formed to himself no design fatal to its privileges. He recollected, no doubt, that he had heretofore exposed himself for its service. He had bared his bosom in defence of his native soil, and still felt the smart of wounds, received in conflict for his king and country. Could that spirit, which had braved the shafts of foreign battle, brook the keener wounds of civil contest? The arrows which now

pierced him, pierced as deep and rankled more than those of former times.

Is it rational to imagine much harmony could long subsist? We must take human nature as we find it, and not vainly imagine, that all things are to become new, at such a crisis. There are an order of men in every commonwealth, who never reason, but always act from feeling. That their rights and liberties were filched away one after another, they had often been told. They had been taught by those whom they believed, that the axe was now laid to the root of the tree, and one more stroke would complete its fall. It was in vain to expect to silence or subdue these emotions by reasons, soothings, or dangers. A belief, that nothing could be worse than the calamities which seemed inevitable, had extended itself on all sides, and arguments drawn from such sources had little influence. Each day gave rise to new occurrences, which increased animosities. Heartburnings, heats, and bickerings became more and more extensive. Reciprocal insults soured the temper, mutual injuries embittered the passions. Can we wonder, that when every thing tended to some important action, the period so soon arrived? Will not our wonder be increased to find the crisis no sooner taking place, when so many circumstances united to hasten its approach? To use an allusion somewhat homely, may we not wonder that the acid and the alkali did not sooner ferment?

A thought here imperceptibly forces itself on our minds, and we are led to be astonished, that persons so discordant in opinion, and so opposite in views, attach-

ments, and connexions, should be stationed together. But, here, gentlemen, we must stop. If we pursue this inquiry, at this time, and in this place, we shall be in danger of doing great injustice. We shall get beyond our limits. The right of quartering troops in this province must be discussed at a different tribunal. The constitutional legality, the propriety, the expediency of their appointment, are questions of state, not to be determined, or even agitated by us, in this court. It is enough for us, if the law takes notice of them when thus stationed, if it warrants their continuance, if it protects them in their quarters. They were sent here by that authority, which our laws know; they were quartered here, as I take it, agreeably to an act of the British parliament; they were ordered here by your sovereign and mine.

Let me here take a method very common with another order of men. Let me remind you of what is *not* your duty.

Gentlemen, great pains have been taken by different men, with different views, to involve the character, the conduct, and reputation of the town of Boston, in the present issue. Boston and its inhabitants have no more to do with this cause, than you, or any other members of the community. You are, therefore, by no means to blend together two things, so essentially different, as the guilt, or innocence, of this town and the prisoners. The inhabitants of Boston, by no rules of law, justice, or common sense, can be supposed answerable, for the unjustifiable conduct of a few individuals, hastily assembled in the streets.

Every populous city, in like circumstances, would be liable to similar commotions, if not worse. No rational or honest man will form any worse opinion of this metropolis, for the transactions of that melancholy night. Who can, who will, unnecessarily interest themselves to justify the rude behavior of a mixt and ungovernable multitude? May I not appeal to you, and all who have heard this trial thus far, that things already wear a different aspect from what we have been heretofore taught to expect? Had any one told you, some weeks ago, that the evidence on the crown-side would have appeared in the present light, would you have believed it? Can any one think it his duty, to espouse the cause of those assembled in King street? I think not; but lest my opinion should not have any weight, let me remind you of an author, who, I could wish, were in the hands of all of you; one whom I trust you will credit. I am sure you ought to love and revere him. I wish his sentiments were engraven in indelible characters on your hearts. You will not suspect him of being unfriendly to liberty; if this cause and its events must be interwoven with a matter so foreign to it. I allude to the third letter of the "Farmer of Pennsylvania," to his countrymen.[1]

[1] The celebrated "Farmer's Letters" were written against the revenue acts of Great Britain, by John Dickinson, of Pennsylvania. The depth of research, force of argument, and perspicuity of style, which appeared in these letters, made them popular with all classes of readers in America. Dr. Franklin caused them to be reprinted in England, with a commendatory preface from his own pen. Sparks's Life of Franklin, p. 456.

"The cause of liberty," says that great and good writer, "is a cause of too much dignity to be sullied by turbulence and tumult; it ought to be maintained in a manner suitable to her nature. Those who engage in it should breathe a sedate yet fervent spirit, animating them to actions of prudence, justice, modesty, bravery, humanity, and magnanimity." What has there transpired on this trial, savoring of any of these virtues? Was it justice, or humanity, to attack, insult, ridicule, and abuse a single sentinel on his post? Was it either modest, brave, or magnanimous, to rush upon the points of fixed bayonets, and trifle, vapor, and provoke, at the very mouths of loaded muskets? It may be brutal rage, or wanton rashness, but not, surely, any true magnanimity.

"I hope," says the same eminent writer, "my dear countrymen, that you will in every colony be upon your guard against those, who at any time endeavor to stir you up, under pretence of patriotism, to any measures disrespectful to your sovereign, and our mother country." By this it should seem, as though the "Farmer" never expected any period would arrive, when such measures would be warrantable. Now what more disrespectful to our parent country, than to treat with contempt a body of men, stationed, most certainly, by the consent of her supreme legislature, the parliament of Britain? What more disrespectful to our common sovereign, than to assume the sword of justice, and become the avengers of either public or private wrongs? Though the soldiers, who appeared in the earlier part of the evening in Cornhill, acted like barbarians and savages,

they had now retired, and were confined in their barracks; what though an impertinent boy had received unjustifiable correction from the sentinel; the boy, and the persons in Cornhill, must have recourse only to the law for their redress. Courts of law are styled "*vindices injuriarum*," the avengers of injuries, and none others are to assume this prerogative. The law erects itself as the supreme, dernier resort, in all complaints of wrong; and nothing could more essentially sap our most important interests, than any countenance to such dangerous encroachments on the domains of municipal justice.

But, finally, to finish with the justly celebrated "Farmer." — "Hot, rash, disorderly proceedings injure the reputation of a people, as to wisdom, valor, and virtue, without procuring the least benefit." Thus have you the sense of this, with us, great authority. And let me ask all those, who have thought the cause of this country connected with the agents of the assembly in King street, whether the proceedings of that unhappy night were hot, rash, or disorderly? If they were, have they not, in the opinion of this great friend of liberty, injured our reputation, as to wisdom, valor, and virtue; and that too, without procuring the least benefit? Who then would sacrifice his judgment, and his integrity, to vindicate such proceedings?

To what purposes the soldiers were sent; whether it was a step warranted by sound policy, or not, we shall not inquire; we are to consider the troops, not as the instruments for wresting our rights, but as fellow citizens, who, being to be tried by a law extending to

every individual, claim a part in its benefits, — its privileges, — its mercy. We must steel ourselves against passions which contaminate the fountain of justice. We ought to recollect, that our present decisions will be scanned, perhaps through all Europe. We must not forget, that we ourselves will have a reflective hour, — an hour, in which we shall view things through a different medium, — when the pulse will no longer beat with the tumults of the day, — when the conscious pang of having betrayed truth, justice, and integrity, shall bite like a serpent, and sting like an adder.

Consider, gentlemen, the danger which you, and all of us are in, of being led away by our affections and attachments. We have seen the blood of our fellow men flowing in the streets. We have been told that this blood was wrongfully shed. That is now the point in issue. But let it be borne deep upon our minds, that the prisoners are to be condemned by the evidence here in court produced against them, and by nothing else. Matters heard or seen abroad, are to have no weight; in general, they undermine the pillars of justice and truth. It has been our misfortune, that a system of evidence has appeared in the world against us.[1] It is not our

[1] After the occurrence on the fifth of March, a committee, appointed by the inhabitants of Boston, took the depositions of a large number of witnesses, and drew up a statement of the occurrence. This narrative of the Boston committee was entirely erroneous in many respects, and the depositions were very different from the testimony of the same witnesses at the trial, when the excitement had somewhat subsided, and they were subjected to a cross-examination.

business to blame any one for this. It is our misfortune, I say. It should be remembered, that we were not present to cross-examine; and the danger, which results from this publication being in the hands of those who are to pass upon our lives, ought to be guarded against. We say we are innocent, by our plea; and we are not to be denounced guilty by a new species of evidence, — unknown in the English system of criminal law.

But, as though a series of *ex parte* evidence was not enough, all the colors of the canvass have been touched, in order to freshen the wounds, and by a transport of imagination, we are made present at the scene of action. The prints exhibited in our houses have added wings to fancy, and, in the fervor of our zeal, reason is in hazard of being lost;[1] for, as was elegantly expressed, by a learned gentleman at the late trial, "the passions of man, nay, his very imaginations, are contagious." The pomp of funeral and the horrors of death have been so delineated, as to give a spring to our ideas and inspire a glow incompatible with sound deliberative judgment. In this situation, every passion has been alternately predominant.

[1] Immediately after the occurrence, a print was published by Paul Revere, which was circulated through the country. It was very famous in that day, and there were few houses in which it was not an ornament. Copies of it are still seen, and within a few years a new (reduced) engraving of this print was made in Boston. It gives a somewhat false idea of the scene it purports to represent. The soldiers are represented as drawn up in a line before the custom house (on which is a large sign containing the fancy title of BUTCHERS' HALL,) and at the bidding of their commander, deliberately firing at the inhabitants, several of whom fall dead in the street.

They have each in its turn subsided in degree, and then have sometimes given place to despondence, grief, and sorrow. How careful should we be, that we do not mistake the impressions of gloom and melancholy for the dictates of reason and truth. How careful, lest, borne away by a torrent of passion, we make shipwreck of conscience.

Perhaps you may be told, gentlemen, as I remember it was said, at the late trial, that passions were like the flux and reflux of the sea, the highest tides always producing the lowest ebbs. But let it be noticed, that the tide, in our political ocean, has yet never turned; certainly the current has never set towards the opposite quarter. However similes may illustrate, they never go for proof; though, I believe it will be found, that if the tide of resentment has not risen of late, it has been because it had already reached the summit. In the same mode of phraseology, if so homely an expression may be used, perhaps, as the seamen say, it has been high-water slack; but I am satisfied that the current has not yet altered its course, in favor of the prisoners at the bar.

Many things yet exist sufficient to keep alive the glow of indignation. I have aimed at securing you against the catching flame. I have endeavored to discharge my duty in this respect. What success will follow those endeavors, depends on you, gentlemen. If being told of your danger will not produce caution, nothing will. If you are determined in opinion, it is vain to say more; but if you are zealous inquirers after truth, if you are willing to hear with

impartiality, to examine and judge for yourselves, — enough has been said to apprize you of those avenues, at which the enemies of truth and justice are most likely to enter, and most easily to beset you.

Gentlemen of the jury, I shall now, for argument's sake only, take it for granted, that the fact of killing has been proved upon all the prisoners: you are sensible that this is not really true, for as to this point, there are several of the prisoners upon whom the fact is not fixed. But as I shall hereafter take occasion to consider the distinct case of each prisoner, as he is affected by the evidence, I at present choose to avoid confusion, and apply myself to the full strength of the crown; and, upon a supposition, that all the prisoners are answerable for the act of any one, see how the prisoners are chargeable, by the evidence already offered, with the crime of murder; — or rather endeavor to point out to you those facts, appearing by the evidence on the crown side, which will amount, in law, to a justification, an excuse, or at least, an extenuation of their offence; for, we say, that, give the evidence for the king its full scope and force, and our offence is reduced, at least, to manslaughter; in which case, we claim the privilege of that law, by the sentence of which, if guilty, we must suffer the pains of death; a privilege, we can never again claim, a privilege, that by no means implies exemption from all punishment; the offender becomes liable to imprisonment for a year, incurs a forfeiture of all goods and chattels, and, till he receives the judgment of law, is to all intents a felon, subject to all the disabilities and other incidents of a

felon. Without taking up time, in attending and discussing points, no way pertinent to the present issue; without a tedious recapitulation of circumstances with which, I take it, we have no more concern than either of you, gentlemen: I say, passing over all these matters as foreign to this trial, let us state the evidence appearing even from the crown witnesses.

Mr. Quincy then proceeded to a minute detail of the evidence against the prisoners, pointing out the circumstances which favored them, and commenting chiefly on the facts which served to refute or invalidate the positions of the counsel for the crown, by showing an assault and attack upon the sentry. He admitted, that there was great excitement amongst the soldiers on that evening. Bands of them were driving through the streets, using insulting language, and maltreating those citizens whom they met. He was ready to admit, that their conduct was entirely unjustifiable; but the prisoners were not of the number who thus acted like ruffians. Nor did it appear, that the soldiers who were guilty of this reprehensible conduct belonged to the twenty-ninth regiment. These acts could in no way prejudice the prisoners. They were foreign to the issue, and, he humbly conceived, ought not to have been mentioned on the present occasion at all. He then stated the proofs he expected to exhibit on the part of the prisoners, to show that all which they did was necessary and proper in self-defence.

More than fifty witnesses were then examined to

prove the facts alleged in the defence. From their testimony, it was abundantly evident, that there was unusual excitement amongst all classes of the citizens in the beginning of the evening, and there was a general expectation of a serious affray between the soldiers and the town's people. Crowds of people were collected in various parts of the town, armed with clubs[1] and other deadly weapons. Parties of soldiers were also driving through the streets, armed with bayonets, cutlasses, and clubs, and treating all whom they met in the most insulting manner. In the first part of the evening, several collisions had taken place between the citizens and soldiers, and one near Cornhill, in which the soldiers of the fourteenth regiment were engaged, had become quite serious before the officers were enabled to confine the soldiers in their barracks; a citizen having received a severe wound with a cutlass. It was also proved, that the sentry at the custom house was placed there by authority, and could not leave his station; that he was insulted, pressed upon, and pelted with clubs, snow balls, and oyster shells, and that he frequently threatened the aggressors that he would fire, before he called for the assistance of the main guard. It was also proved, that the soldiers of the main guard, on their way to his assistance, received the same treatment, but there was no direct evidence that they were ordered to fire by their com-

[1] While the soldiers were stationed in Boston, the citizens were constantly liable to be insulted, and it seems to have been a general custom for those who were out in the evening to carry walking sticks, &c., for self-defence.

mander, although they were frequently dared to do it by their assailants. They were accused of cowardice; were called "dastards," "cowards," "lobsters," in reference to the color of their coats, and "bloody backs," in reference to the custom of flogging in the army; and every conceivable term of insult was thrown at them by the excited crowd by which they were surrounded.

The full testimony of a few of the witnesses gives a sufficiently correct idea of the facts relied on in the defence.

Richard Hirons—a physician. On the evening of March fifth, a little after eight o'clock, hearing a noise and disturbance in the street, I went out to know what it was, and was told there was a difference between the town's people and soldiers. I saw several soldiers pass and repass, some with bayonets, and some with clubs; standing at my door, I saw a number of people running to and fro, across the bottom of the street. I shut my door and went in about eight or ten minutes. I then heard a noise like a single person running through Boylston's alley with great violence; he ran, as I took it, towards the barrack gate, and cried out, "town-born, turn out; town-born, turn out." I heard this repeated twenty or thirty times; it was the constant cry. I remember, after coming out the second time, to have heard the voice of a person whom I took to be Ensign Maul say, "who is this fellow, lay hold of him." I did not hear a word pass between the people that went backwards and forwards, and the sentinel at the barrack

gate, nor from the sentinel to them: this cry of "town-born, turn out," was repeated for seven or eight minutes, when I heard the voices of a great many more. The collection of such a number, with a noise of the clubs, induced me to lock my door, put out my light in the front part of my house, and to go up stairs into the chamber fronting the barracks; when there, I observed four or five officers of the twenty-ninth regiment standing on their own steps, and there might be some twenty or thirty of the town's people surrounding the steps. About that time, there came a little man, who he was I do not know; he said, "why do you not keep your soldiers in their barracks;" they said they had done every thing they possibly could, and would do every thing in their power to keep them in their barracks; on which he said, "are the inhabitants to be knocked down in the street, are they to be murdered in this manner?" The officers still insisted they had done their utmost, and would do it, to keep the soldiers in their barracks; the same person then said, "you know the country has been used ill, you know the town has been used ill, we did not send for you, we will not have you here, we will get rid of you," or, "we will drive you away;" which of the last expressions I cannot say, but it was one or the other. The officers still insisted they had done their utmost, and would do it, to keep the soldiers in their barracks, and begged the person to use his interest to disperse the people, that no mischief might happen; whether he did address the people or not, I cannot say, for the confusion was so great I could not dis-

tinguish. Immediately the cry of "home," "home," was mentioned; I do not recollect seeing any person go away at the first cry, and there was such confusion I could not tell what was said, but in five minutes afterwards the cry "home," "home," was repeated, on which the greatest part of them, possibly two thirds, went up Boylston's alley towards the town-house, huzzaing for the main guard. I then observed more of the town's people coming from towards the market; there was a squabble and noise between the people and the officers, but what was said I could not hear. The next thing I recollect in the affair was, a little boy came down the alley, clapping his hand to his head, and crying *he was killed, he was killed;* on which one of the officers took hold of him, and damned him for a little rascal, asking him what business he had out of doors; the boy seemed to be about seven or eight years old. Some little time after that, I saw a soldier come out of the barrack gate with his musket, he went directly facing the alley, in the middle of the street, and kneeled down on one knee, and said, "now, damn your bloods, I will make a lane through you all." While he was presenting, Mr. Maul, an ensign, with either Mr. Dixon, or Mr. Minchin, I do not know which, came after him, immediately laid hold of him, and took the musket from him, shoved him towards the barrack, and I think gave him the musket again, and charged him at his peril to come out again. I do not recollect any discourse that passed between the town's people and officers, there was still such clamor and confusion, that I could not hear what

passed; but in a little time either the soldier who came out before, or another, came out again; he repeated much the same words as the other, and had his gun in his hand, he did not offer to kneel down, but used the same expressions. He was presenting his firelock, when Mr. Maul knocked him down, took his musket from him, drove him into the barracks, and I think the barrack gate was then shut. About this time I recollect hearing Dr. Cooper's bell ring, and I heard some officer say, "go and stop that bell from ringing;" whether any body went or not, I cannot say, but it did not ring a great while. About this time I saw Captain Goldfinch, of the fourteenth, on the steps with the officers of the twenty-ninth; there came up a little man, who he was I do not know, but in a much different manner from what the other did. He requested the soldiers might be kept in their barracks, and that the officers would do every thing in their power to keep them there; the officers said they had, and would do so: and, as the soldiers were in their barracks, begged the people might go away; this little man said to the people, gentlemen, you hear what the officers say, that the soldiers are all in their barracks, and you had better go home; on which the cry was "home, home." Then a great many went up the alley again, and I heard the expression, "let us go to the main guard." Captain Goldfinch was still on the steps; I heard his voice still talking, and I think he desired every person would go away. While he was talking, I heard the report of a musket. In a few seconds I heard the report of a second gun; presently after that a

third; upon the firing of the first gun, I heard Captain Goldfinch say, "I thought it would come to this, it is time for me to go." I then saw a soldier come down the alley from Cornhill, and go up to the steps where the officers stood. He said, they fired from or upon the main guard. I then heard the drum at the main guard beat to arms. I came down stairs and did not go out till I was sent for to some of the wounded people. I was sent for to Maverick. About two hours before his death, I asked him concerning the affair; he said he went up the lane, and just as he got to the corner, he heard a gun; he did not retreat back, but went to the town house; as he was going along he was shot. It seems strange, by the direction of the ball, how he could be killed by the firing at the custom-house; it wounded a part of the liver, stomach, and intestines, and lodged between the lower ribs, where I cut it out; the ball must have struck some wall or something else, before it struck him. He was between Royal Exchange lane and the town house, going up towards the town house.

Benjamin Davis, jun. — On the evening of the fifth of March, near the bottom of Royal Exchange lane, I saw a mob by Mr. Greenleaf's. I went right along into King street, where I saw the sentinel. A barber's boy, who was there crying, said the sentry had struck him, and I asked him what business he had to do it. I went home and staid at the gate in Green's lane some time; Samuel Gray (one of the persons killed that night in King street) came along, and asked where the fire was? I said there was no fire, it was the soldiers fighting; he said, "damn it,

I am glad of it, I will knock some of them on the head;" he ran off, I said to him, "take heed you do not get killed in the affray yourself;" he said, "do not you fear, damn their bloods." He had a stick under his arm. I do not suppose he could have got into King street two minutes before the firing.

Alexander Cruckshank — a jeweller. On the evening of the fifth of March, as the clock struck nine, I came up Royal Exchange lane, and, at the head of the lane, hearing some abusive language by two boys, I stopped at Stone's tavern. They were abusing the sentinel; before the box stood about twelve or fourteen other boys. I often saw the two boys go towards them and back to the sentinel with a fresh repetition of oaths; they called him lobster and rascal, wished he was in hell's flames, often and often. I neither heard nor saw the sentinel do any thing to them; he only said it was his post, and he would maintain it, and if they offered to molest him, he would run them through. Upon his saying this, two boys made up some snow balls, and threw them at the sentinel, who called out "guard," "guard," two or three times, very loud. Upon that, some soldiers came from towards the main guard, seven or eight I believe; they were not of the guard by their having surtout coats on, they came towards the sentinel; some had bayonets, some swords, others sticks in their hands; on their approach, these people, and the boys who stood before the box, went up to the back of the town house, by the barber's shop; I then crossed King street, and intended to go in by Pudding lane. Three or four of these soldiers came down to me,

damned me, and asked who I was; I said, I was going home peaceably, and interfered with neither one side or another. One of them, with a bayonet or sword, gave me a light stroke over my shoulder, and said, "friend, you had better go home, for by all I can foresee, there will be the devil to pay or blood shed this night;" they turned and went towards the sentinel, at the custom house. I then went up by the guard house, and when I had passed it a little way, I saw the soldiers who went down before the custom house returning back, with a mob before them, driving them up past the guard house. I stepped on pretty quick, and endeavored to get into Mr. Jones's (apothecary's) shop.

"What number of people were there before the soldiers?"

"Sixteen or eighteen. Some of them were boys, but the most of them were men from twenty to five-and-twenty years of age, I believe; Jones's people shut the door and would not let me in; I went to the side of the brick meetinghouse, and saw two or three boys or lads, pushing at the windows to get in and ring the bell. I went home."

"Did you take the stroke you received from the soldiers to be in anger?"

"No, it was not in anger, it was very light."

William Davis — sergeant major of the fourteenth regiment. On Monday evening, the fifth of March, about eight o'clock, I was going towards the North end in Fore street, near Wentworth's wharf, and saw about two hundred people in the street before me. I then stept aside. I saw several armed with clubs, and

large sticks, and some had guns; they came down by twos and threes abreast; they were a minute in passing me. I saw no soldier in the street. I heard them saying, "damn the dogs, knock them down, we will knock down the first officer or bloody backed rascal we shall meet this night." Some of them then said they would go to the southward, and join some of their friends there, and attack the damned scoundrels, and drive them out of the town, for they had no business here. Apprehending danger if I should be in my regimentals, I went into a house at the North end and changed my dress, and on my return from the North end about nine, coming near Dock square, I heard a great noise, a whistling and rattling of wood. I came near the market place, and saw a great number of people there, knocking against the posts, and tearing up the stalls, saying "damn the lobsters, where are they now." I heard several voices, some said "let us kill that damned scoundrel of a sentry, and then attack the main guard;" some said, "let us go to Smith's barracks," others said, "let us go to the ropewalks." They divided; the largest number went up Royal Exchange lane, and another party up Fitch's alley, and the rest through the main street, up Cornhill. I passed by the Golden Ball, I saw no person there but a woman, persuading a man to stay at home; he said he would not; he would go amongst them if he lost his life by it. I went into King street; looking towards the custom house, I saw a number of people seemingly in great commotion; I went towards my barracks, and near the fish stall at Oliver's dock I met a great

number of people coming towards King street, with clubs and large sticks. It was past nine, for I had heard bells ring before. One of them was loading his piece by Oliver's dock; he said he would *do* for some of these scoundrels that night. The people were using threats against the soldiers and commissioners, "damn the scoundrels and villains of soldiers and commissioners, and damn the villain that first sent them to Boston; they shall not be here two nights longer." I went to my barracks; the roll had been called, and there was not a man absent, except some officers that quartered in the town, and their servants. Immediately after, I heard, as it were, a gun fired in King street, and afterwards two or three more.

Nathaniel Russell — a chair-maker. On the evening of the fifth of March, between nine and ten o'clock, being at my own house and hearing the bells ring, I ran out to know where the fire was. I got from Byles's meeting house down to the South meeting house; I saw a number of men and boys armed with clubs, and fifteen or twenty more coming along; some were damning the soldiers, that they would destroy them, and sink them, and they would have revenge for something or other, I could not tell what; that they would drive them before them. Some of the people there said they had been to Rowe's barracks, and had driven the soldiers or the sentinel into the barracks. I saw a number of people with clubs, and at a distance a parcel of soldiers at the custom house; I went down to the right of them where Captain Preston stood; I had not been there

a minute, before the guns were fired, previous to which, I saw several things thrown at the soldiers, as they stood in a circle by the custom house. Upon these things being thrown, I intended to retreat as fast as I could. I had not got three yards before the guns were fired, first one, then another and so on; I think there were seven in all.

"Before you turned, did you see any thing strike the guns?"

"I did not see, but I heard something strike, and the guns clatter. There was a great noise, the cry was, *fire, damn you fire.*"

"Was the cry general?"

"Yes, it was general."

"How many people do you imagine were then gathered round the party?"

"Fifty or sixty able-bodied men."

"Did they crowd near the soldiers?"

"So near that I think you could not get your hat between them and the bayonets."

"How many people do you think there might be in the whole?"

"About two hundred."

"Did the soldiers say any thing to the people?"

"They never opened their lips; they stood in a trembling manner, as if they expected nothing but death. They fired first on the right. I was looking on the whole body, there was no one between me and the soldiers that interrupted my sight; I saw no blows given, or any of the soldiers fall."

"Might not their trembling proceed from rage as well as fear?"

"It might proceed from both."

Henry Knox — a stationer. I was at the North end, and heard the bells ring. I thought it was fire, and came up as usual to go to the fire. I heard it was not fire, but that the soldiers and inhabitants were fighting. I came by Cornhill, and there were a number of people, an hundred and fifty or two hundred. I asked them what was the matter, they said a number of soldiers had been out with bayonets and cutlasses, and had attacked and cut the people all down Cornhill, and then retreated to their barrack. A fellow said they had been cutting fore and aft. The people fell gradually down to Dock square. I came up Cornhill, and went down King street. The sentinel at the custom house steps was loading his piece; coming up to the people, they said the sentinel was going to fire. There were at that time about fifteen or twenty people round him. He was waving his piece about, and held it in the position that they call "charged bayonets." I told him if he fired he must die for it; he said damn them, if they molested him he would fire; the boys were hallooing "fire and be damned." These boys were seventeen or eighteen years old. I endeavored to keep one fellow off from the sentinel, and either struck him or pushed him away.

"Did you hear one of the persons say, 'God damn him, we will knock him down for snapping?'"

"Yes, I did hear a young fellow, one Usher, about eighteen years of age, say this."

Benjamin Lee — an apprentice. On the evening of the fifth of March I heard that there was fire, and

went to Dock square. When I came there I heard some in the crowd say, that the town's people had been fighting with the soldiers, and then they huzzaed for King street. Several beside me went up; they went up as thick as they could, and some went up the next lane, and others up Cornhill. As I stood by the sentinel, there was a barber's boy came up and pointed to the sentinel, and said, "there is the son of a bitch that knocked me down;" on his saying this, the people immediately cried out, "kill him, kill him, knock him down." I believe there were as many there as in this court, some boys, some men. The sentinel went up the custom house steps and knocked at the door with the but of his gun, but could not get in; then he primed and loaded, and leveled it with his hip, and desired the people to stand off, and then called to the main guard to come down to his assistance.

"Did he call loud?"

"Yes, very loud."

"What was the expression he used?"

"Turn out, main guard. Then Captain Preston and nine or ten soldiers came down, and ranged themselves before the sentry box."

"Did you see any thing thrown at the sentinel?"

"No."

"Did you hear the people halloo or shout?"

"They whistled through their fingers and huzzaed."

Andrew, Oliver Wendell's negro. On the evening of the fifth March I was at home. I heard the bells ring, and went to the gate, and saw one of my acquaintances; we ran down to the end of the lane

and saw another acquaintance coming up holding his arm. I asked him what was the matter; he said the soldiers were fighting, had got cutlasses, and were killing every body, and that one of them had struck him on the arm, and almost cut it off; he told me I had best not go down; I said a good club was better than a cutlass, and he had better go down and see if he could not cut some too. I went to the town house, saw the sentinels placed at the main guard standing by Mr. Bowe's corner; numbers of boys on the other side of the way were throwing snow balls at them. The sentinels were enraged and swearing at the boys; the boys called them "lobsters," "bloody backs," and hallooed "who buys lobsters?" Presently I heard three cheers given in King street, and went down to the whipping-post and stood by Waldo's shop; I saw a number of people round the sentinel at the custom house; there were also a number of people who stood where I did, and were picking up pieces of sea coal that had been thrown out thereabout, and snow balls, and throwing them over at the sentinel. While I was standing there, two or three boys ran out from among the people, and cried, "we have got his gun away, and now we will have him;" presently I heard three cheers given by the people at the custom house; I said to my acquaintance I would run up and see whether the guard would turn out. I went and saw a file of men, with an officer with a laced hat on before them; upon that we all went to go towards him, and when we had got about half way to them, the officer said something to them, and they filed off down the street.

Upon that I went in the shade towards the guard house, and followed them down as far as Mr. Peck's corner; I saw them pass through the crowd, and plant themselves by the custom house. As soon as they got there the people gave three cheers. I went to cross over to where the soldiers were, and as soon as I got a glimpse of them, I heard somebody huzza and say here is old Murray with the riot act, and they began to pelt with snow balls; a man set out and run, and I followed him as far as Phillips's corner, and then turned back and went through the people until I got to the head of Royal Exchange lane, right against the soldiers; the first word I heard was a grenadier saying to a man by me, "Damn you, stand back." He was so near that the grenadier might have run him through if he had stept one step forward. While I stopt to look at him, a person came to get through betwixt the grenadier and me, and the soldier had liked to have pricked him; he turned about and said, "you damned lobster, bloody back, are you going to stab me;" the soldier said, "by God I will." Presently somebody took hold of me by the shoulder, and told me to go home, or I should be hurt; at the same time there were a number of people towards the town house, who said, come away and let the guard alone, you have nothing at all to do with them. I turned about and saw the officer standing before the men, and one or two persons engaged in talk with him. A number were jumping on the backs of those that were talking with the officer, to get as near as they could. Upon this I went as close to the officer as I could: one of the per-

sons who was talking with the officer turned about quick to the people, and said, "Damn him, he is going to fire;" upon that they gave a shout, and cried out, "fire and be damned, who cares for you, you dare not fire," and began to throw snow balls, and other things which then flew very thick. I saw two or three of them hit, one struck a grenadier on the hat. The people who were right before them had sticks, and as the soldiers were pushing with their guns back and forth, they struck their guns, and one hit a grenadier on the fingers. At this time the people up at the town house called again, "come away, come away;" a stout man who stood near me, and right before the grenadiers, as they pushed with their bayonets with the length of their arms, kept striking on their guns. The people seemed to be leaving the soldiers, and to turn from them, when there came down a number from Jackson's corner huzzaing and crying, "damn them, they dare not fire, we are not afraid of them." One of these people, a stout man with a long, cord wood stick, threw himself in, and made a blow at the officer. I saw the officer try to ward off the stroke; whether he struck him or not I do not know; the stout man then turned round, and struck the grenadier's gun at the captain's right hand, and immediately fell in with his club, and knocked his gun away, and struck him over the head; the blow came either on the soldier's cheek or hat. This stout man held the bayonet with his left hand, and twitched it and cried, "kill the dogs, knock them over." This was the general cry. The people then crowded in, and upon that, the grena-

dier gave a twitch back and relieved his gun, and he up with it and began to pay away on the people. I was then between the officer and this grenadier; I turned to go off, when I heard the word "fire;" at the word *fire*, I thought I heard the report of a gun, and upon my hearing the report, I saw the same grenadier swing his gun, and immediately he discharged it.

"Do you know who this stout man was that fell in and struck the grenadier?"

"I thought, and still think, it was the mulatto who was shot."

"Do you know the grenadier who was thus assaulted, and fired?"

"I then thought it was Killroy, and I told Mr. Quincy so the next morning after the affair happened; I now think it was he from my best observation, but I can't positively swear it."

"Did the soldiers of that party, or any of them, step or move out of the rank in which they stood, to push the people?"

"No; and if they had they might have killed me and many others with their bayonets."

"Did you, as you passed through the people towards Royal Exchange lane and the party, see a number of people take up any and every thing they could find in the street, and throw them at the soldiers?"

"Yes, I saw ten or fifteen round me do it."

"Did you yourself pick up every thing you could find, and throw at them?"

"Yes, I did."

"After the gun was fired, where did you go?"

"I ran as fast as I could into the first door I saw open, which I think was Mr. Dehon's; I was very much frightened."

Oliver Wendell — a merchant. The witness last examined is my servant. His general character for truth is good. I have heard his testimony, and believe it to be true; he gave the same relation of this matter to me on the same evening, in a quarter of an hour after the affair happened; I then asked him whether our people were to blame, and he said they were.

"Pray, sir, is it not usual for Andrew to amplify and embellish a story?"

"He is a fellow of a lively imagination, and will sometimes amuse the servants in the kitchen, but I never knew him tell a serious lie."

William Whittington. — I was in King street a quarter after nine o'clock on the fifth of March, and two others with me; in a little while I heard the bells ring, and I made a stop and asked what was the matter? They said there was a fire. I saw several people with buckets, and I asked them where they were going? They said there was fire somewhere. I came up by Pudding lane, and went in between the guard and guard house, for at this time the main guard was turned out; I saw Mr. Basset the officer, and Captain Preston; while I was standing there, some person in the crowd fronting the soldiers cried out to the guard, "will you stand there and see the sentinel murdered at the custom-house?" Captain Preston and Mr. Basset were both together;

Mr. Basset said to Captain Preston, "what shall I do in this case?" Said Preston, "take out six or seven of the men, and let them go down to the assistance of the sentry." I think there were six men ordered out of the ranks; they formed themselves by files, the corporal marched in the front, and the Captain in the rear; I was at this time on the outside of the soldiers on the left hand, and I kept on the outside from the time they marched from the parade till they came to the custom-house; but how they formed themselves when they came there, I did not see; but when I saw them they were formed in a half circle. I was about two or three yards distance from them. I heard Captain Preston use many entreaties to the populace, begging they would disperse and go home, but what they said I cannot tell; I heard them halloo, "fire!" "fire!" "you dare not fire," "we know you dare not fire." Captain Preston desired them to go home many times; I departed and saw no more of them.

Harrison Gray, jun. — That evening, upon returning home, I saw a number of people round the sentinel, making use of opprobrious language and threatenings; I desired them to go off, and said the consequence would be fatal if they did not; some few snow balls were thrown, and abusive language continued, they said, "damn him, let him fire, he can fire but one gun."

"How many were there?"

"There might be from seventy to an hundred, I did not particularly observe; when I could not prevail to get them off, I went to Mr. Payne's. In a

little while the party came down, and I saw nothing afterwards; soon after I heard the guns fired, and Mr. Payne was wounded by one of them. I told the people, the sentinel was on duty, that was his post, that he had a right to walk there, and that he could have enough to relieve him, if he stood in need of it, as he was so near the main guard."

John Jeffries — a surgeon. I was Patrick Carr's surgeon, in company with others. After dressing his wounds, I advised him never to go again into quarrels and riots. He said he saw many things thrown at the sentry; he believed they were oyster shells and ice; he heard the people huzza every time they heard any thing strike that sounded hard; he then saw some soldiers going down towards the custom-house; he saw the people pelt them as they went along. After they had got down there, he crossed over towards Warden and Vernon's shop, in order to see what they would do; as he was passing he was shot, and was taken up and carried home to Mr. Field's by some of his friends. I asked him whether he thought the soldiers would fire; he told me he thought the soldiers would have fired long before. I then asked him whether he thought the soldiers were abused a great deal after they went down there; he said he thought they were. I asked him whether he thought the soldiers would have been hurt if they had not fired; he said he really thought they would, for he heard many voices cry out, "kill them." I asked him then, meaning to close all, whether he thought they fired in self-defence, or on purpose to destroy the people; he said he really

thought they did fire to defend themselves, that he did not blame the man, whoever he was, that shot him. This conversation was on Wednesday. He always gave the same answers to the same questions, every time I visited him. He was informed by me of his dangerous situation. He told me he was a native of Ireland; that he had frequently seen mobs, and soldiers called upon to quell them. Whenever he mentioned that, he always called himself a fool, that he might have known better, that he had seen soldiers often fire on the people in Ireland, but had never in his life seen them bear half so much before they fired. He lived ten days after he received his wound. I had the last conversation with him about four o'clock in the afternoon preceding the night on which he died, and he then particularly said, he forgave the man, whoever he was, that shot him; he was satisfied he had no malice, but fired to defend himself.

Edward Payne — a merchant,[1] produced on the part of the crown. On Monday evening, the fifth of March, I went to Mr. Amory's; while I was there the bell rang, which I supposed was for nine o'clock; I looked at the clock, it was twenty minutes after nine. I was going out to inquire where the fire was; Mr. Taylor came in, and said there was no fire, but he understood the soldiers were coming up to cut

[1] His house was in King street, nearly opposite the custom-house, on the spot where the office of the Massachusetts Fire and Marine Insurance Company now stands. While standing at his door, conversing with Harrison Gray, jun. on the evening referred to, he was wounded in the arm, when the soldiers fired.

down liberty tree! I then went out to make inquiry; before I had got into King street, I met Mr. Walker the ship carpenter, and asked him what the matter was; he said the soldiers had sallied out from Smith's barracks, and had fallen on the inhabitants, and had cut and wounded a number of them, but that they were driven into the barracks; I then went to my house to inform Mrs. Payne that it was not fire, apprehending she might be frightened; I immediately went out again, there was nobody in the street at all; the sentry at the custom-house was walking as usual, nobody near him; I went up towards the town house, where was a number of people and inquired of them what the matter was? They gave me the same account that Mr. Walker did. While I stood there, I heard a noise in Cornhill, and presently I heard a noise of some people coming up Silsby's alley; at first I imagined it was soldiers, and had some thoughts of retiring up the town house steps, but soon found they were inhabitants. I stood till they came up to me; I believe there might be twenty at the extent; some of the persons had sticks, some had not; I believe there were as many with sticks as without; they made a considerable noise, and cried, "where are they? where are they?" At this time there came up a barber's boy, and said the sentry at the custom-house had knocked down a boy belonging to their shop; the people then turned about and went down to the sentry; I was then left as it were alone; I proceeded towards my own house; I met Mr. Spear the cooper, he said, do not go away, I am afraid the main guard will come down; I told

him I was more afraid of those people that had surrounded the sentry, and desired him, if he had any influence over them, to endeavor to take them off; and when directly opposite to the custom-house I saw a number of persons going up the steps, and heard a violent knocking at the door; the sentry stood by the box as I took it; I stopped to see if they opened the custom-house door to let them in, and found they did not open the door; I then retired to my own house, and stood on the sill of my door. I remained at my door, and Mr. Harrison Gray came up and stood there talking with me; the people were crying out, "fire! fire! damn you, why do you not fire?" Mr. Gray and I were talking of the foolishness of the people in calling the sentry to fire on them; in about a minute after, I saw a number of soldiers come down from the main guard, and it appeared to me they had their muskets in a horizontal posture; they went towards the custom-house, and shoved the people from the house; I did not see in what manner they drew up; at this time Mr. Bethune joined us on my steps at the door, and the noise in the street continued much the same as before, "fire! fire! damn you, fire! why do you not fire? Soon after this, I thought I heard a gun snap, and said to Mr. Gray, "there is a gun snapped, did you not hear it?" He said "yes;" immediately a gun went off, I reached to see whether it was loaded with powder, or any body lying dead; I heard three more, then there was a pause, and I heard the iron rammers go into their guns, and then there were three more discharged, one after another; it appeared to

me there were seven in all; as soon as the last gun was discharged, I perceived I was wounded, and went into the house.

The examination of the witnesses for the defendants occupied four days. After it was concluded the court adjourned to the following Monday, when Mr. Josiah Quincy, jun. concluded his remarks, as follows:

May it please your Honors, and you, Gentlemen of the Jury,

We have at length gone through the evidence in behalf of the prisoners. The witnesses have placed before you that state of facts from which results our defence. The examination has been so lengthy, that I am afraid some painful sensations arise, when you find that you are now to sit and hear the remarks of counsel. But you should reflect, that no more indulgence is shown to the prisoners now on trial, than has ever been shown in all capital causes; the trial of one man has often taken up several days: when you consider, therefore, that there are eight lives in issue, the importance of the trial will show the necessity of its length. To each of the prisoners different evidence applies, and they each of them draw their defence from different quarters.

In my former remarks upon opening this cause to you, gentlemen, I pointed out the dangers to which you were exposed. How much need was there for my desire, that you should suspend your judgment till the witnesses were all examined! How different is the complexion of the cause! Will not all this

serve to show every honest man the little truth to be attained in partial hearings? We have often seen communities complain of *ex parte* testimonies; individuals, as well as societies of men, are equally susceptible of injuries of this kind. This trial ought to have another effect; it should serve to convince us all of the impropriety, nay injustice, of giving a latitude in conversation upon topics likely to come under a judicial decision; the criminality of this conduct is certainly enhanced, when such loose sallies and discourses are so prevalent as to be likely to touch the life of a citizen. Moreover, there is so little certainty to be obtained by such kind of methods, that I wonder we so often find them practised. In the present case, how great was the prepossession against us! And I appeal to you, gentlemen, what cause there now is to alter our sentiments. Will any sober, prudent man countenance the proceedings of the people in King street? Can any one justify their conduct? Is there any one man, or any body of men, who are interested to espouse and support their conduct? Surely not. But our inquiry must be confined to the legality of their conduct; and here can be no difficulty. It was certainly illegal, unless many witnesses are directly perjured; witnesses, who have no apparent interest to falsify — witnesses, who have given their testimony with candor and accuracy — witnesses, whose credibility stands untouched — whose credibility the counsel for the king do not pretend to impeach, or hint a suggestion to their disadvantage.

The conduct of the soldiers in Cornhill may well be

supposed to have exasperated the minds of all who beheld their behavior. Their actions accumulated guilt, as it flew; at least, we may well suppose, the incensed people who related them added new colors to the scene. The flame of resentment imperceptibly enkindles, and a common acquaintance with human nature will show it to be no extravagant supposition to imagine that many a moderate man might at such a season, with such sentiments, which I have more than once noticed, hearing such relations and complaints — I say, do I injure any one, in supposing, that under all these circumstances, a very moderate person, who in ordinary matters acted with singular discretion, should now be drawn imperceptibly away or rather transported into measures, which in a future moment he would condemn and lament. What more natural supposition, than to suppose many an honest mind might at this time fluctuate thus. The soldiers are here; we wish them away; we did not send for them; they have cut and wounded the peaceable inhabitants, and it may be my turn next. At this instant of time, he has a fresh detail of injuries — resentment redoubles every successive moment — huzza for the main guard! we are in a moment before the custom-house. No time is given for recollection. We find, from the king's evidence, and from our own, the cry was "Here is a soldier!" Not "here is *the* soldier who has injured us — here is the fellow who wounded the man in Cornhill." No, the reasoning or rather ferment seems to be, the soldiers have committed an outrage, we have an equal right to inflict punishment, or rather revenge, which

they had to make an assault. They said right, but never considered, that those soldiers had no right at all. These are sentiments natural enough to persons in this state of mind — we can easily suppose even good men thinking and acting thus. Very similar to this is the force of Dr. Hiron's testimony, and some others. But our inquiry is, what says the law? We must calmly inquire, whether this, or any thing like it, is countenanced by the law. What is natural to the man, what are his feelings, are one thing: what is the duty of the citizen, is quite another. Reason must resume her seat, and then we shall hear and obey the voice of the law.

The law indulges no man in being his own avenger. Early, in the history of jurisprudence, we find the sword taken from the party injured, and put into the hands of the magistrate. Were not this the case, punishment would know no bounds in extent or duration. Besides, it saps the very root of distributive justice, when any individual invades the prerogative of law, and snatches from the civil magistrate the balance and the rod. How much more are the pillars of security shaken, when a mixt body, assembled as those in King street, assume the province of justice, and invade the rights of the citizen? For it must not be forgotten, that the soldier is a citizen, equally entitled with us all to protection and security. Hence all are alike obliged to pay obedience to the law; for the price of this protection is the duty of obedience.

Let it not be apprehended, that I am advancing a doctrine, that a soldier may attack an inhabitant, and

he not be allowed to defend himself. No, gentlemen! if a soldier rush violently through the street, and present a weapon of death in a striking posture, no doubt the person assailed may defend himself, even to taking the life of the assailant. Revenge and a sense of self-preservation instantly take possession of the person thus attacked; and the law goes not upon the absurd supposition, that a person can in these circumstances unman himself. Hence we find, if a husband, taking his wife in the act of adultery, instantly seizes a deadly weapon and slays the adulterer, it is not murder. Nay, a fillip upon the nose or forehead, in anger, is supposed by the law to be sufficient provocation to reduce killing to manslaughter. It is, therefore, upon principles like these, principles, upon which those, who now bear the hardest against us, at other times, so much depend; it is, I say, upon the right of self-defence and self-preservation we rely for our acquittal.

Mr. Quincy now entered, at large, upon a review of the appearances in several parts of the town; he was copious upon the expressions and behavior sworn to. He then, more particularly, recapitulated the evidence touching Murray's barracks, Dock square, and the Market place. He next pursued several parties through the several lanes and streets, till they centered at the scene of action. The testimonies of the witnesses, who swore to the repeated information given the people; that the sentry and party were on duty; that they were desired to withdraw, and warned of the consequences; were in their order consid-

ered. He then remarked at length upon the temper of the sentry, of the party of soldiers, and of the people surrounding them, and continued as follows:

May it please your Honors, and you, Gentlemen of the Jury,

After having thus gone through the evidence, and considered it as applicatory to all and every of the prisoners, the next matter in order seems to be the consideration of the law pertinent upon this evidence. And here, gentlemen, let me again inform you, that the law which is to pass upon these prisoners, is a law adapting itself to the human species, with all their feelings, passions, and infirmities; a law which does not go upon the absurd supposition, that men are stocks and stones; or that in the fervor of the blood, a man can act with the deliberation and judgment of a philosopher. No, gentlemen: the law supposes that a principle of resentment, for wise and obvious reasons, is deeply implanted in the human heart; and not to be eradicated by the efforts of state policy. It, therefore, in some degree, conforms itself to all the workings of the passions, to which it pays a great indulgence, so far as not to be wholly incompatible with the wisdom, good order, and the very being of government.

Keeping, therefore, this full in view, let us take once more, a very brief and cursory survey of the matters supported by the evidence. And, here, let me ask sober reason — what language more opprobrious — what actions more exasperating, than those used on this occasion? Words, I am sensible, are no justification of blows, but they serve as the grand clues to

discover the temper and the designs of the agents; they serve also to give us light in discerning the apprehensions and thoughts of those who are the objects of abuse.

"You lobster," "you bloody back," "you coward," and "you dastard," are but some of the expressions proved. What words more galling? What more cutting and provoking to a soldier? To be reminded of the color of his garb, by which he was distinguished from the rest of his fellow citizens; to be compared to the most despicable animal that crawls upon the earth, was touching indeed a tender point. To be stigmatized with having smarted under the lash at the halbert; to be twitted with so infamous an ignominy, which was either wholly undeserved, or a grievance which should never have been repeated: I say, to call upon and awaken sensations of this kind, must sting even to madness. But accouple these words with the succeeding actions, — "You dastard, — you coward!" A soldier and a coward! This was touching, (with a witness) "the point of honor, and the pride of virtue." But while these are as yet fomenting the passions, and swelling the bosom, the attack is made; and probably the latter words were reiterated at the onset; at least, were yet sounding in the ear. Gentlemen of the jury, for heaven's sake, let us put ourselves in the same situation! Would you not spurn at that spiritless institution of society, which should tell you to be a subject at the expense of your manhood?

But does the soldier step out of his ranks to seek his revenge? Not a witness pretends it. Did the

people come within the points of their bayonets, and strike on the muzzles of the guns? You have heard the witnesses.

Does the law allow one member of the community to behave in this manner towards his fellow citizen, and then bid the injured party be calm and moderate? The expressions from one party were — "Stand off — stand off!" "I am upon my station." "If they molest me upon my post, I will fire." "By God I will fire!" "Keep off!" These were words likely to produce reflection and procure peace. But had the words on the other hand a similar tendency? Consider the temper prevalent among all parties at this time. Consider the then situation of the soldiery; and come to the heat and pressure of the action. The materials are laid, the spark is raised, the fire enkindles, the flame rages, the understanding is in wild disorder, all prudence and true wisdom are utterly consumed. Does common sense, does the law, expect impossibilities? Here, to expect equanimity of temper, would be as irrational, as to expect discretion in a mad man. But was any thing done on the part of the assailants, similar to the conduct, warnings, and declarations of the prisoners? Answer for yourselves, gentlemen. The words, reiterated all around, stabbed to the heart; the actions of the assailants tended to a worse end; to awaken every passion of which the human breast is susceptible. Fear, anger, pride, resentment, revenge, alternately, take possession of the whole man. To expect, under these circumstances, that such words would assuage the tempest, that such actions would

allay the flames — you might, as rationally, expect the inundations of a torrent would suppress a deluge, or rather, that the flames of Etna would extinguish a conflagration!

Prepare, gentlemen of the jury, now to attend to that species of law, which will adapt itself to this trial, with all its singular and aggravating circumstances; a law full of benignity, full of compassion, replete with mercy.

Mr. Quincy here went into an elaborate examination and exposition of the law, applying it to the facts, with explanatory comments, and thus concluded:

Gentlemen of the Jury:

This cause has taken up much of your time, and is likely to take so much more, that I must hasten to a close; indeed I should not have troubled you, by being thus lengthy, but from a sense of duty to the prisoners; who, in some sense, may be said to have put their lives into my hands; whose situation is so peculiar, that we have necessarily taken up more time than ordinary cases would require; who, under all these circumstances, placed a confidence, which it was my duty not to disappoint; and which I have aimed at discharging with fidelity. I trust that you, gentlemen, will do the like; that you will examine and judge with a becoming temper of mind; remembering that they, who are under oath to declare the whole truth, think and act very differently from bystanders, who, being under no ties of this kind, take

a latitude which is by no means admissible in a court of law.

I cannot better close this cause, than by desiring you to consider well the genius and spirit of the law which will be laid down, and to govern yourselves by this great standard of truth. To some purposes, you may be said, gentlemen, to be ministers of justice; and "ministers," says a learned judge, "appointed for the ends of public justice, should have written on their hearts the solemn engagements of his majesty, at his coronation, to cause law and justice in mercy to be executed in all his judgments."

> "The quality of mercy is not strained;
> It droppeth like the gentle rain from heaven ——
> —— It is twice blessed;
> It blesses him that gives, and him that takes."

I leave you, gentlemen, hoping you will be directed in your inquiry and judgment to a right discharge of your duty. We shall all of us, gentlemen, have an hour of cool reflection, when the feelings and agitations of the day shall have subsided; when we shall view things through a different and a much juster medium. It is then that we all wish an absolving conscience. May you, gentlemen, now act such a part, as will hereafter insure it; such a part as may occasion the prisoners to rejoice. May the blessing of those, who were in jeopardy of life, come upon you: may the blessing of him, who is not faulty to die, descend and rest upon you and your posterity.

JOHN ADAMS.

May it please your Honors, and you, Gentlemen of the Jury.

I am for the prisoners at the bar, and shall apologize for it only in the words of the Marquis Beccaria: "If I can but be the instrument of preserving one life, his blessing and tears of transport shall be a sufficient consolation to me, for the contempt of all mankind." As the prisoners stand before you for their lives, it may be proper to recollect with what temper the law requires we should proceed to this trial. The form of proceeding at their arraignment has discovered, that the spirit of the law upon such occasions, is conformable to humanity, to common sense and feeling; that it is all benignity and candor. And the trial commences with the prayer of the court, expressed by the clerk, to the supreme judge of judges, empires, and worlds: "God send you a good deliverance."

We find, in the rules laid down by the greatest English judges, who have been the brightest of mankind, that we are to look upon it as more beneficial, that many guilty persons should escape unpunished, than that one innocent person should suffer. The reason is, because it is of more importance to the community, that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in the world, that all of them cannot be punished; and many times they happen in such a manner, that it is not of much consequence to the public, whether they are punished or not.

But when innocence itself is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me whether I behave well or ill, for virtue itself is no security. And if such a sentiment as this should take place in the mind of the subject, there would be an end to all security whatsoever. I will read the words of the law itself.

The rules I shall produce to you are from Lord Chief Justice Hale, whose character as a lawyer, as a man of learning and philosophy, and as a christian, will be disputed by nobody living; one of the greatest and best characters the English nation ever produced. his words are these: *Tutius semper est errare in acquietando, quam in puniendo, ex parte misericordiæ, quam ex parte justitiæ;* it is always safer to err in acquitting than punishing, on the part of mercy than the part of justice. The next is from the same authority: *Tutius erratur ex parte mitiori;* it is always safer to err on the milder side, the side of mercy; the best rule in doubtful cases, is, rather to incline to acquittal than conviction. *Quod dubitas ne feceris;* where you are doubtful never act; that is, if you doubt of the prisoner's guilt, never declare him guilty; this is always the rule, especially in cases of life. Another rule from the same author is, that in some cases presumptive evidence goes so far as to prove a person guilty, though there is no express proof of the fact to have been committed by him; but then it must be very warily pressed, for it is better five guilty persons should escape unpunished, than that one innocent person should die.

The next authority shall be from another judge, of

equal character, considering the age wherein he lived; that is Chancellor Fortescue, writing in praise of the laws of England. This is a very ancient writer on the English law. His words are: "Indeed one would rather, much rather, that twenty guilty persons escape the punishment of death, than one innocent person be condemned, and suffer capitally." Lord Chief Justice Hale says, it is better that five guilty persons escape, than one innocent person suffer. Lord Chancellor Fortescue, you see, carries the matter farther, and says, indeed one had rather, much rather, that twenty guilty persons should escape, than one innocent person suffer capitally. Indeed, this rule is not peculiar to the English law; there never was a system of laws in the world, in which this rule did not prevail; it prevailed in the ancient Roman law, and, which is more remarkable, it prevails in the modern Roman law; even the judges in the courts of inquisition, who, with racks, burnings and scourges, examine criminals, even there, they preserve it as a maxim, that it is better the guilty should escape punishment than the innocent suffer: *Satius esse nocentem absolvi quam insentem damnari.* This is the temper we ought to set out with, and these the rules we are to be governed by. And I shall take it for granted, as a first principle, that the eight prisoners at the bar had better be all acquitted, though we should admit them all to be guilty, than that any one of them should by your verdict be found guilty, being innocent.

I shall now consider the several divisions of law, under which the evidence will arrange itself.

The act now before you is homicide, that is,

the killing of one man by another; the law calls it homicide, but it is not criminal in all cases for one man to slay another. Had the prisoners been on the plains of Abraham, and slain an hundred Frenchmen apiece, the English law would have considered it as a commendable action, virtuous and praiseworthy; so that every instance of killing a man is not a crime in the eye of the law.

The law divides homicide into three branches: the first is justifiable, the second excusable, and the third felonious. Felonious homicide is subdivided into two branches; the first is murder, which is killing with malice aforethought, the second is manslaughter, which is killing a man on a sudden provocation. Here, gentlemen, are four sorts of homicide, and you are to consider, whether all the evidence amounts to the first, second, third, or fourth, of these heads. The fact, was the slaying of five unhappy persons that night; you are to consider, whether it was justifiable, excusable, or felonious; and, if felonious, whether it was murder or manslaughter. One of these four it must be; you need not divide your attention to any more particulars. I shall, however, before I come to the evidence, show you several authorities which will assist you and me in contemplating the evidence before us.

I shall begin with justifiable homicide. If an officer, a sheriff, execute a man on the gallows, draws and quarters him, as in case of high treason, and cuts off his head, this is justifiable homicide: it is his duty. So also, gentlemen, the law has planted fences and barriers around every individual; it is a castle

round every man's person, as well as his house. As the love of God and our neighbor comprehends the whole duty of man, so self-love and social comprehend all the duties we owe to mankind, and the first branch is self-love, which is not only our indisputable right, but our clearest duty; by the laws of nature, this is interwoven in the heart of every individual; God Almighty, whose laws we cannot alter, has implanted it there, and we can annihilate ourselves, as easily as root out this affection for ourselves. It is the first and strongest principle in our nature; Blackstone calls it "the primary canon in the law of nature." That precept of our holy religion, which commands us to love our neighbor as ourselves, doth not command us to love our neighbor better than ourselves, or so well; no christian divine hath given this interpretation. The precept enjoins, that our benevolence to our fellow men should be as real and sincere as our affections to ourselves, not that it should be as great in degree. A man is authorized, therefore, by common sense, and the laws of England, as well as those of nature, to love himself better than his fellow subject; if two persons are cast away at sea, and get on a plank, (a case put by Sir Francis Bacon,) and the plank is insufficient to hold them both, the one hath a right to push the other off to save himself. The rules of the common law, therefore, which authorize a man to preserve his own life at the expense of another's, are not contradicted by any divine or moral law. We talk of liberty and property, but, if we cut up the law of self-defence, we cut up the foundation of both, and if we give up

this, the rest is of very little value; and, therefore, this principle must be strictly attended to, for whatsoever the law pronounces in the case of these eight soldiers will be the law to other persons and after ages. It would have been better if all the persons that have slain mankind in this country, from the beginning to this day, had been acquitted, than that a wrong rule and precedent should be established.

I shall now read to you a few authorities on this subject of self-defence. Foster, in his Crown Law, says, in the case of justifiable self-defence, the injured party may repel force with force, in defence of his person, habitation, or property, against one who manifestly intendeth and endeavoreth, with violence or surprise, to commit a known felony upon either. In these cases, he is not obliged to retreat, but may pursue his adversary, till he findeth himself out of danger, and if in a conflict between them he happeneth to kill, such killing is justifiable. The injured person may repel force by force against any who endeavor to commit any kind of felony on him or his; here the rule is, I have a right to stand on my own defence, if you intend to commit felony. If any of the persons made an attack on these soldiers, with an intention to rob them, if it was but to take their hats feloniously, they had a right to kill them on the spot, and had no business to retreat; if a robber meets me in the street, and commands me to surrender my purse, I have a right to kill him without asking questions; if a person commits a bare assault on me, this will not justify killing; but if he assaults me in such a manner as to discover an intention to

kill me, I have a right to destroy him, that I may put it out of his power to kill me. In the case you will have to consider, I do not know that there was any attempt to steal from these persons; however, there were some persons concerned, who would probably enough have stolen, if there had been any thing to steal; and many were there who had no such disposition; but this is not the point we aim at, the question is, are you satisfied that the people made the attack in order to kill the soldiers? If you are satisfied that the people, whoever they were, made that assault, with a design to kill or maim the soldiers, this was such an assault, as will justify the soldiers killing in their own defence.

Further, it seems to me we may make another question, whether you are satisfied that their real intention was to kill or maim or not. If any reasonable man, in the situation of one of these soldiers, would have had reason to believe in the time of it, that the people came with an intention to kill him, whether you have this satisfaction now, or not, in your own minds, they were justifiable, or at least excusable, in firing. You and I may be suspicious, that the people who made this assault on the soldiers, did it to put them to flight, on purpose that they might go exulting about the town afterwards in triumph; but this will not do, you must place yourselves in the situation of Wemms or Killroy, consider yourselves as knowing that the prejudices of the world about you were against you; that the people about you, thought you came to dragoon them into obedience to statutes, instructions, mandates and edicts, which

they thoroughly detested; that many of these people were thoughtless and inconsiderate, old and young, sailors and landmen, negroes and mulattos; that the soldiers had no friends about them, the rest were in opposition to them; with all the bells ringing, to call the town together to assist the people in King street, for they knew by that time, that there was no fire; the people shouting, huzzaing, and making the mob whistle, as they call it, which, when a boy makes it in the street, is no formidable thing, but when made by a multitude, is a most hideous shriek, almost as terrible as an Indian yell; the people crying "kill them," "kill them," "knock them over!" heaving snow balls, oyster shells, clubs, white birch sticks three inches and an half in diameter. Consider yourselves in this situation, and then judge whether a reasonable man in the soldiers' situation, would not have concluded they were going to kill him. I believe, if I were to reverse the scene, I should bring it home to our own bosoms; suppose Colonel Marshall, when he came out of his own door, and saw these grenadiers coming down with swords, had thought it proper to have appointed a military watch; suppose he had assembled Gray and Attucks that were killed, or any other persons in town, and had planted them in that station as a military watch, and there had come from Murray's barracks thirty or forty soldiers, with no other arms than snow balls, cakes of ice, oyster shells, cinders and clubs, and attacked this military watch in this manner, what do you suppose would have been the feelings and reasonings of any of our householders? I confess I believe they

would not have borne the one half of what the witnesses have sworn the soldiers bore, till they had shot down as many as were necessary to intimidate and disperse the rest; because, the law does not oblige us to bear insults to the danger of our lives, to stand still with such a number of people round us, throwing such things at us, and threatening our lives, until we are disabled to defend ourselves.

In the case before you, I suppose you will be satisfied when you come to examine the witnesses, and compare it with the rules of common law, abstracted from all mutiny acts and articles of war, that these soldiers were in such a situation, that they could not help themselves; people were coming from Royal Exchange lane, and other parts of the town, with clubs, and cord-wood sticks; the soldiers were planted by the wall of the custom house; they could not retreat, they were surrounded on all sides, for there were people behind them as well as before them; there were a number of people in Royal Exchange lane; the soldiers were so near to the custom house, that they could not retreat, unless they had gone into the brick wall of it. I shall show you presently, that all the party concerned in this unlawful design, were guilty of what any one of them did; if any body threw a snow ball, it was the act of the whole party; if any struck with a club, or threw a club, and the club had killed any body, the whole party would have been guilty of murder in law.

Rules of law should be universally known, whatever effect they may have on politics. They are rules of common law, the law of the land; and it is

certainly true, that, wherever there is an unlawful assembly, let it consist of many persons or a few, every man in it is guilty of every unlawful act committed by any one of the whole party, be they more or be they less, in pursuance of their unlawful design. This is the policy of the law, to discourage and prevent riots, insurrections, turbulence and tumults.

In the continual vicissitudes of human things, amidst the shocks of fortune and the whirls of passion, that take place at certain critical seasons, even in the mildest government, the people are liable to run into riots and tumults. There are church quakes and state quakes, in the moral and political world, as well as earthquakes, storms and tempests, in the physical. Thus much however must be said in favor of the people and of human nature, that it is a general if not an universal truth, that the aptitude of the people to mutinies, seditions, tumults and insurrections, is in direct proportion to the despotism of the government. In governments completely despotic, where the will of one man is the only law, this disposition is most prevalent; in aristocracies, next; in mixed monarchies, less than in either of the former; in complete republics, least of all; and, under the same form of government as in a limited monarchy, for example, the virtue and wisdom of the administration may generally be measured by the peace and order that are seen among the people. However this may be, such is the imperfection of all things in this world, that no form of government, and perhaps no wisdom or virtue in the administration, can at all times avoid riots and disorders among the people.

Mr. Adams here went into a learned and elaborate examination of the law applicable to the facts of the case. He insisted, that, by well established principles of the law, in case of an unlawful assembly, all and every one of the assembly are guilty of every unlawful act, committed by any one of that assembly, in prosecution of the unlawful design; and, upon this point, he made copious extracts from celebrated writers on criminal law. He then contended, that the assemblies of citizens in the various parts of the town on the evening referred to were unlawful assemblies — they were mobs. "I do not mean," he said, "to apply the word 'rebel' on this occasion. I have no reason to suppose that there ever was one in Boston, at least among the natives of the country. But rioters are in the same situation, as far as my argument is concerned, and proper officers may suppress rioters, and so may even private persons." Mr. Adams being fully aware of the feeling against the defendants, because they were soldiers, did not place their defence on the sole ground that they were acting in obedience to orders; but he considered them as citizens who were entitled to the protection of the laws as much as any other citizens. He then argued, that the sentry being attacked in the street by a mob, any persons had a right to go to his assistance, and endeavor to suppress the riot. "Suppose," he said, "a press-gang should come on shore in this town, and assault any sailor, or householder in King street, in order to carry them on board one of his majesty's ships, and impress him without any warrant, as a seaman in his majesty's service, how far

do you suppose the inhabitants would think themselves warranted by law to interpose against that lawless press-gang? I agree that such a press-gang would be as unlawful an assembly as that was in King street. If they were to press an inhabitant, and carry him off for a sailor, would not the inhabitants think themselves warranted by law to interpose in behalf of their fellow citizens? Now, gentlemen, if the soldiers had no right to interpose in the relief of the sentry, the inhabitants would have no right to interpose with regard to the citizen, for whatever is law for a soldier is law for a sailor and for a citizen, they all stand upon an equal footing in this respect. I believe we shall not have it disputed, that it would be lawful to go into King street and help an honest man there against the press-master.[1]

[1] There was more meaning in this allusion to a press-gang than is apparent at first sight. The case of the crew on board the Pitt Packet was still fresh in the recollection of the people and there had recently been several instances of impressment in Boston, under aggravated circumstances. Cases of this sort had also occurred many years before, which were not forgotten. In the year 1747, several sailors having deserted from a fleet of war lying in the harbor of Nantasket, the commodore thought it reasonable that Boston should supply him with as many men as he had lost, and sent his boats up to town early one morning, and impressed not only as many seamen as could be found on board any of the ships, but swept the wharves also, taking some ship carpenters' apprentices and laboring land men. The people at once resented this conduct. The lower classes in particular were enraged. A mob proceeded to the house of Governor Shirley, where there were some officers of the fleet, and surrounded it. They were persuaded not to enter, but a deputy sheriff who attempted to exercise his authority was seized and set in the stocks, when the people separated in good humor to go to dinner. In the evening, the mob again assembled, and the seizure of the officers in town was insisted on as the only

"Now suppose you should have a jealousy in your minds, that the people who made this attack on the sentry had nothing more in their intention than to take him off his post, and that was threatened by some; suppose they intended to go a little farther, and tar and feather him, or to ride him (as the phrase is in Hudibras), he would have had a good right to have stood upon his defence, the defence of his liberty, and if he could not preserve that without hazard to his own life, he would be warranted in depriving those of life who were endeavoring to deprive him of his; that is a point I would not give up for my right hand, nay, for my life.

"Well, I say, if the people did this, or if this was only their intention, surely the officer and soldiers had a right to go to his relief, and therefore they set out upon a lawful errand, they were therefore a lawful assembly, if we only consider them as private subjects and fellow citizens, without regard to mutiny acts, articles of war, or soldiers' oaths; a private person, or any number of private persons, have a right to go to the assistance of their fellow subject in distress and danger of his life, when assaulted and in danger from a few or a multitude."

It was not pretended that all who were killed were engaged in the assault on the soldiers, but he insist-

effectual method of procuring the release of the inhabitants aboard the ships. A town meeting was soon called, and the riotous proceedings were condemned, but the inhabitants expressed their sense of the great insult and injury by the impressment. The general court passed sundry resolves. The commodore soon released most if not all of the inhabitants who had been impressed, and the squadron sailed.

ed, that, if the soldiers fired in self-defence against those who were actually assaulting them, and others were killed, they were not guilty of murder; for if it was justifiable or excusable in them to kill any one of the rioters, it was equally justifiable or excusable, if in firing at him they killed another who was innocent. So if the provocation was such as to mitigate the guilt to manslaughter, it would equally mitigate the guilt, if they killed an innocent man undesignedly, in aiming at those who gave the provocation.

Mr. Adams then entered into an exposition of the law relating to manslaughter, contending that if the killing in this case were not justifiable or excusable, it was done under such circumstances as reduced the offence to manslaughter. "An assault and battery, committed upon a man in such a manner as not to endanger his life, is such a provocation as the law allows to reduce killing down to the crime of manslaughter. Now the law has been made on more consideration than we are capable of making at present; the law considers a man as capable of bearing any thing and every thing but blows. I may reproach a man as much as I please, I may call him a thief, robber, traitor, scoundrel, coward, lobster, bloody back, and if he kills me it will be murder, if nothing else but words precede; but if from giving him such kind of language, I proceed to take him by the nose, or fillip him on the forehead, that is an assault, that is a blow; the law will not oblige a man to stand still and bear it; there is the distinction; hands off, touch me not; as soon as you touch me, if I run you through the heart it is but manslaughter;

the utility of this distinction, the more you think of it, the more you will be satisfied with it; it is an assault whenever a blow is struck, let it be ever so slight, and sometimes even without a blow. The law considers man as frail and passionate; when his passions are touched he will be thrown off his guard; and therefore the law makes allowances for this frailty, considers him as in a fit of passion, not having the possession of his intellectual faculties; and consequently does not oblige him to measure out his blows with a yardstick, or weigh them in a scale; let him kill with a sword, gun, or hedge-stake, it is not murder, but only manslaughter."

Mr. Adams proceeded to a minute consideration of every witness in the case, and endeavored to show, that the assault upon the soldiers was sufficiently dangerous to justify them in the course they took; at least, that it was sufficiently provoking to reduce the crime to manslaughter. The soldiers were chained to the spot by the command of their officer. They were bound by their oath to obedience. They could not defend themselves against so many people as were pressing on them. They had every reason to believe their lives were in danger. They were a lawful assembly, and the people attacking them were, by every principle of law, a mob. "We have been entertained," he exclaimed, "with a great variety of phrases, to avoid calling this sort of people a mob. Some call them shavers, some call them geniuses. The plain English is, gentlemen, most probably, a motley rabble of saucy boys, negroes, and mulattoes, Irish teagues and outlandish jack tars. And

why we should scruple to call such a set of people a mob, I cannot conceive, unless the name is too respectable for them. The sun is not about to stand still or go out, nor the rivers to dry up, because there was a mob in Boston on the fifth of March that attacked a party of soldiers. Such things are not new in the world, nor in the British dominions, though they are, comparatively, rarities and novelties in this town. Carr, a native of Ireland, had often been concerned in such attacks, and, indeed, from the nature of things, soldiers quartered in a populous town, will always occasion two mobs, where they prevent one. They are wretched conservators of the peace!"

But in regard to all but two of the prisoners there was no evidence to convict them even of manslaughter, because there was no direct proof that any but Killroy and Montgomery caused the death of any one. There were eight prisoners charged with the murder of five persons. Now it was fully proved, that one of the prisoners did not fire, and the gun of another flashed. Two, at least, of the prisoners were innocent, and one of these was not known. In this uncertainty, therefore, the jury must acquit all, unless there was positive proof that some of the rest did fire and did cause the death of some who were killed. It was said that there was evidence of this sort against Killroy and Montgomery; and proof was introduced to show that the former had uttered threats against the people, and that he had a particular spite against Gray, whom he was supposed to have killed, the latter having been engaged with him

in the previous affray at the ropewalks. But the rule of law was, if there had been malice between the two, and at a distance of time afterwards they met, and one of them assaulted the other and was killed in consequence, the law presumed that the killing was upon the provocation, and not on account of the antecedent malice. If, therefore, the assault upon Killroy was so violent as to endanger his life, he had as good a right to defend himself, as if he had never before conceived any malice against Gray. It was true that Hemmingway, the sheriff's coachman, had sworn, that he knew Killroy and that he heard him say, he would never miss an opportunity of firing upon the inhabitants; this was to prove that Killroy had preconceived malice in his hea t, not indeed against the unhappy persons who were killed, but against the inhabitants in general; that he had the spirit not only of a Turk or an Arab, but of the devil. But admitting that this testimony was literally true, and that he had all the malice they would wish to prove, yet, if he was assaulted that night, and his life in danger, he had a right to defend himself as well as another man; if he had malice before, it did not take away from him the right of defending himself against any aggressor. But it was not at all improbable, that there was some misunderstanding about these loose expressions; perhaps the man had no thoughts of what his words might import; many a man in his cups, or in anger, which was a short fit of madness, uttered the rashest expressions, who had no such savage disposition in general; so that there was but little weight in ex-

pressions uttered at a kitchen fire, before a maid and a coachman, where he might think himself at liberty to talk as much like a bully, a fool, or a madman as he pleased, and that no evil would come of it.

In regard to Montgomery, the evidence was clear that he was personally assaulted and knocked down before he fired. When the multitude was shouting and huzzaing, and threatening life, the bells ringing, the mob whistling, screaming, and rending like an Indian yell; the people from all quarters throwing every species of rubbish they could pick up in the street, and some who were quite on the other side of the street throwing clubs at the whole party; Montgomery in particular smitten with a club and knocked down, and as soon as he could rise and take up his firelock, struck on his breast or shoulder by another club from afar, what could he do? Did the jury expect he should behave like a stoic philosopher lost in apathy — patient as Epictetus, while his master was breaking his legs with a cudgel? It was impossible they should find him guilty of murder. They must suppose him divested of all human passions, if they did not think him at the least provoked, thrown off his guard, and into the *furor brevis*, by such treatment as this.

Attucks, whom Montgomery was supposed to have killed, appeared to have undertaken to be the hero of the night, and to lead this army with banners, to form them in the first place in Dock square, and march them up to King street with their clubs. They passed through the main street up to the main guard, in order to make the attack. If this was not an un-

lawful assembly, there never was one in the world. Attucks, with his mirmidons, comes round Jackson's corner, and down to the party by the sentry box; when the soldiers pushed the people off, this man with his party cried, "do not be afraid of them, they dare not fire, kill them! kill them! knock them over!" — and he tried to knock their brains out. It was plain the soldiers did not leave their station, but cried to the people, "stand off." Now to have this reinforcement coming down under the command of a stout mulatto fellow, whose very looks were enough to terrify any person, what had not the soldiers then to fear? He had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down. This was the behavior of Attucks; to whose mad proceedings, in all probability, the dreadful carnage of that night was chiefly to be ascribed. And it was in this manner this town had been often treated; a Carr from Ireland, and an Attucks from Framingham, happening to be here, shall sally out upon their thoughtless enterprises, at the head of such a rabble of negroes and worthless characters as they can collect together, and then there were not wanting persons to ascribe all their doings to the good people of the town.

Mr. Adams concluded his argument as follows: —

Gentlemen of the Jury,

I will enlarge no more on the evidence, but submit it to you. Facts are stubborn things; and whatever may be our wishes, our inclinations, or the

dictates of our passions, they cannot alter the state of facts and evidence. Nor is the law less stable than the fact; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defence; if it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snow balls, oyster shells, cinders, clubs, or sticks of any kind; this was a provocation, for which the law reduces the offence of killing down to manslaughter, in consideration of those passions in our nature, which cannot be eradicated. To your candor and justice I submit the prisoners and their cause.

The law, in all vicissitudes of government, fluctuations of the passions, or flights of enthusiasm, will preserve a steady undeviating course; it will not bend to the uncertain wishes, imaginations, and wanton tempers of men. To use the words of a great and worthy man, a patriot, and an hero, an enlightened friend of mankind, and a martyr to liberty; I mean Algernon Sidney, who from his earliest infancy sought a tranquil retirement under the shadow of the tree of liberty, with his tongue, his pen, and his sword: "The law," says he, "no passion can disturb. 'T is void of desire and fear, lust and anger. 'T is *mens sine affectu;* written reason; retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons, commands that which is good, and punishes evil in all, whether rich or poor, high or low, — 'T is deaf, inexorable, inflexible." On the one hand it is inexorable to the cries and lamentations

of the prisoners; on the other it is deaf, deaf as an adder, to the clamors of the populace.

The cause was then closed by Robert Treat Paine[1], on the part of the crown, in an argument of great power and clearness, of which, unfortunately, no authentic report was made.[2] It appears, however, from his very copious minutes of the trial, that he commented largely on the testimony, with much ingenuity and wit; stating the nature of the crime of murder, in so far as it is to be distinguised from manslaughter or simple homicide; and insisting that the conduct of the inhabitants was no justification for the firing of the soldiers, or any order of the captain for them to fire; that the first abuse and riot was from the soldiers at an earlier hour, which called the people together in the centre of the town, who, be-

[1] He was born in Boston in 1731, and was graduated at Harvard College in 1749. About the year 1759, he settled in the practice of law at Taunton. In 1774, he was chosen a delegate to congress, and he was one of the signers of the declaration of independence. During the revolution he was a firm and powerful supporter of the rights of his country. He was a member of the convention which formed the constitution of Massachusetts, and one of the committee that prepared a draft of it. He was attorney general under this constitution until 1790, when he was appointed a judge of the supreme court, and held the office until 1803. The remainder of his life he spent in retirement, and died at Boston in 1814, aged eighty-three years. He possessed an original and independent mind, and was celebrated for his wit. He was a profound lawyer and eminently upright.

[2] The reason of this is stated to be, that the "person who wrote the trial in short hand, was so fatigued he could not take down what Mr. Paine said." In a late edition of the trial an attempt is made to supply his argument from the notes used by Mr. Paine on the trial, but it is quite incomplete and unsatisfactory.

ing thus alarmed and agitated, some of them, chiefly boys, addressed the sentinel with threatening and abusive language; some snow balls were then thrown, and some hustling and pushing, when the crowd was about the sentinel. But the soldiers were not in danger of being beaten or wounded, as the citizens designed to act merely on the defensive, and therefore, that the prisoners were justly chargeable with murder.

The jury were then charged at length by Mr. Justice Trowbridge, who went into an elaborate exposition of the law, applicable to the case, and concluded as follows: —

Gentlemen of the Jury,

The principal questions for your consideration are these;

First. Whether the five persons said to be murdered were in fact killed? And if so,

Second. Whether they, or either of them were killed by the prisoners, or either of them? And if they were, then,

Third. Whether such killing was justifiable, excusable or felonious? And if the latter,

Fourth. Whether it was manslaughter or murder?

As to the first, you have not only the coroner's inquest, but the testimony of so many witnesses, that the five persons were shot and thereby mortally wounded in the night of the fifth of March last, and that some of them died instantly, and the rest in a few days after, that you doubtless will be satisfied they were all killed. And the same evidence must, I think, also convince you that they were all killed

by the party of soldiers that were at the custom house that night, or by some of them.

Whether the prisoners were there, will therefore be your next inquiry; for if either of them was not, he must be acquitted. The law does not in this case make the testimony of two witnesses necessary for the jury to settle a fact upon; if one swears it, and upon his testimony you believe it, that is sufficient evidence for you to find the fact. But if you are satisfied upon the evidence, that all the prisoners were there, yet as each prisoner is severally charged with having killed these five persons, and by his plea has denied the charge, you must be fully satisfied upon the evidence given you, with regard to each prisoner, that he in particular did in fact, or in consideration of law, kill one or more of these persons that were slain, or he must be acquitted.

The way therefore to determine this will be for you to name some one of the prisoners, and then consider whether it appears upon the evidence in the case, that he did in fact kill Maverick; and, then, whether upon the evidence it appears he in fact killed Gray? And so inquire in the same manner, whether he did in fact kill either of the other three persons? And having noted how it appears upon the evidence with regard to him, you must then proceed in like manner with each of the other prisoners; and if upon a full consideration of the evidence in the case, you should be in doubt, as to any one of the prisoners having in fact killed either of the persons that were slain, you must consider whether he did it in consideration of law? Now all that are

present, aiding and abetting one person in killing another, do, in judgment of law, kill him. The stroke of one is, in consideration of law, the stroke of all. When a number of persons assemble together to do an unlawful act, and in the prosecution of that design one of them kills a man, all the rest of the company are in law considered as abetting him to do it.

You must therefore inquire how and for what purpose the prisoners came together at the custom house, and what they did there before these persons were killed?

That a sentry was in fact then placed at the custom house, by order of Colonel Dalrymple, the commanding officer, as also that one had been placed there for a long time before, is fully proved, and indeed the right to place sentries, it being in time of peace, is the only thing that has been questioned. Upon this, therefore, I would observe, that, as the main design of society is the protection of individuals by the united strength of the whole community; so for the sake of unanimity, strength and despatch, the supreme executive power is by the British constitution vested in a single person, the king or queen. This single person has sole power of raising fleets or armies; and a statute passed in the reign of Charles the second declares, that within all his majesty's realms and dominions, the sole supreme government, command, and disposition of the militia, and of all the forces by sea and land, and all forts and places of strength, is and by the law of England ever was the undoubted right of his majesty and his royal predecessors, kings and queens of England; and as Charles the

second had this right as king of England, it of course comes to his successors, and our present sovereign lord the king now has it.

Indeed the bill of rights declares among other things, that the raising or keeping a standing army within the kingdom in a time of peace, unless with the consent of parliament, is against law. And it is said, that upon the same principles whereon that declaration was founded, it is alike unlawful to be done in any other part of the king's dominions. But be that as it may, the mutiny acts annually made, show the consent of parliament, that the king in time of peace should keep up a standing army not only in the kingdom but in America also. They not only ascertain the number of troops that shall be kept up, but provide for the regulation of such of the king's troops as are in America. And therefore as by these acts the king is empowered to keep up these troops, and he by common law, has the command and disposition of all forces by sea and land within his dominions, and is the principal conservator of the peace, he doubtless well might send such part of those troops to this part of his dominions, in order to restore the public peace, or to aid and assist the civil magistrate in preserving of it, as he judged necessary for the purpose ; and if you should think there was no occasion for sending any troops here, for either of those purposes that will not alter the case, because the king being the proper judge in that matter, the validity of his order will not depend upon the truth of the representations whereon it is founded. The acts not only fix the number of troops to be kept up, but also

establish a law martial for their government. Among other things, the acts subject every officer or soldier that sleeps on his post, or leaves it before he is relieved, or disobeys the lawful command of his superior officer, to such punishment as a court martial shall inflict, though it extend to death itself. These troops are and ever since they came here have been under this martial law and subject to as strict regulation as in time of war. Placing sentries is a necessary part of the regulation of an army; accordingly a sentry hath in fact been kept at the custom house ever since the troops have been here; and it is sworn that it was done by order of the commanding officer. If so, you have no reason to doubt but that it was legally done.

Your next inquiry then will be, whether the sentry so placed at the custom house was attacked? Many witnesses have sworn that he was. But the counsel for the crown say, that the contrary appears by the testimony of Colonel Marshall and others.

It is with you to determine this matter upon the whole of the evidence given you. In doing it you ought to reconcile the several testimonies, if by any reasonable construction of the words it may be done. Where some witnesses swear they saw such a thing done, and others swear they were present and did not see it; if the thing said to be done be such as it may reasonably be supposed some might see and others not, by reason of their want of observation, or particular attention to other matters there, as both may be true, you ought to suppose them to be so, rather than presume that any of the witnesses swear falsely.

But if witnesses contradict each other, so that their testimonies cannot be reconciled, you must then consider the number of the witnesses on each side, their ability, integrity, indifference as to the point in question, and the probability or improbability arising from the nature of the thing in question, and, upon the whole, settle the fact as you verily believe it to be. If you find the sentry was attacked, the next thing to be considered is, whether the prisoners went to protect him, and if so, whether it was lawful for them so to do. There is a great difference between a common affray, and attacking the king's forces. I think the law in that regard ought to be more generally known here than it seems to be. If upon a sudden quarrel from some affront given or taken, the neighborhood rise and drive the king's forces out of their quarters, it is a great misdemeanor, and if death ensues it may be felony in the assailants, but it is not treason, because there was no intention against the king's person or government; but attacking the king's forces in opposition to his authority, upon a march or in quarters, is levying war against the king. And resisting the king's forces, if sent to keep the peace, may amount to an overt act of high treason. Though it may be attended with great inconveniences for private persons, without a peace officer, to make use of arms for suppressing an ordinary riot, yet if the riot be such an one as savors of rebellion, it doubtless may lawfully be done. You have heard what the witnesses deposed respecting the resolution taken to drive the soldiers out of town, "because they had no business here." You have also heard

what has been testified of the proposals to attack the main guard — of the assembling of the people, especially in Dock square, of the huzzaing for the main guard and King street, and of the attacking the sentry. Now if this was done in pursuance of a resolution taken "to drive the soldiers out of the town because they had no business here," I will not now determine whether it was treason or not; but it certainly was a riot that savored of rebellion: for the suppressing whereof, private persons might not only arm themselves, but make use of their arms, if they could not otherwise suppress it. Much more might the captain of the main guard take a part of the guard, armed as usual, and go with them to protect the sentry. From the evidence, it seems the sentry not only called to the main guard for assistance, but two men went and told them they must send assistance directly or the sentry would be murdered. Whereupon the captain gave orders, that a party should go to the assistance of the sentry, and they were drawn out accordingly, led down to the custom house by a corporal, and followed by the captain. Now as this party did not assemble or go there of their own accord, but were sent by their captain to protect the sentry, it must be supposed that was their design in going, until the contrary appears. And although upon the evidence you should not be satisfied that the sentry was attacked in pursuance of a resolution taken to drive the soldiers out of town, because they had no business here, yet considering the notice given to the captain of the danger the sentry was in, and what the captain himself might

then see and observe of the attack upon the sentry, he well might order out such a party, and go with them to protect the sentry; and it seems to be agreed, that if the prisoners were at the custom house that night, all of them, except the sentry, were of that party. But if they were a lawful assembly when they got to the custom house, yet if afterwards they all agreed to do an unlawful act to the disturbance of the peace, and in prosecution of that design Maverick and the rest were killed, all that party will by law be chargeable with each mortal stroke given by either of them, as though they all had in fact given it.

It is said, that while they were at the custom house, before they fired, some of them attempted with their bayonets to stab every one they could come at, without any reason at all for so doing. Such conduct to be sure can neither be justified nor excused. But as the time was so very short, and some of the witnesses declare the people were crowding upon the soldiers, and that they were moving their guns backwards and forwards, crying "stand off," "stand off," without moving from their station, you will consider whether this may not be what other witnesses call an attempt to stab the people. But, be that as it may, if the party was a lawful assembly before, this not being the act of the whole would not make it unlawful. The counsel for the crown insist, that the firing upon the people was an unlawful act, in disturbance of the peace, and as the party fired so near together, it must be supposed they previously agreed to do it; that agreement made them an unlawful assembly, if they were not so before, and be-

ing so when they fired, all are chargeable with the killing by any one or more of them. However just this reasoning may be, where there is no apparent cause for their firing, yet it will not hold good where there is. If each of the party had been at the same instant so assaulted as that it would have justified his killing the assailant in defence of his own life, and thereupon each of them had at the same instant fired upon and killed the person that assaulted him, surely it would not have been evidence of a previous agreement to fire, or prove them to be an unlawful assembly; nor would it have been evidence of such agreement, if the attack was not such as would justify the firing and killing, though it was such an assault as would alleviate the offence and reduce it to manslaughter, since there would be as apparent a cause of the firing in one case as in the other, and though not so good a cause, yet such an one as the law in condescension to human frailty greatly regards. You will therefore carefully consider what the several witnesses have sworn with regard to the assault made upon the party of soldiers at the custom house, and if you thereupon believe they were before and at the time of their firing attacked by such numbers, and in such a violent manner as many of the witnesses have positively sworn, you will be able to assign a cause for their firing so near together as they did without supposing a previous agreement so to do. But it is said, that if their firing as they did does not prove a previous agreement to do it, yet it is good evidence of an actual abetment to fire, as one by firing encourages the others to do the like.

As neither of the soldiers fired more than once, it is evident that he who fired last could not thereby in fact abet or encourage the firing of any of those who fired before him, and so it cannot be evidence of such abetment. And if he who fired first and killed can justify it, because it was lawful for him so to do, surely that same lawful act cannot be evidence of an unlawful abetment. And though he who first fired and killed may not be able to justify the doing it, yet if it appears he had such a cause for the killing as will reduce it to manslaughter, it would be strange indeed if that same act should be evidence of his abetting another who killed without provocation, so as to make him who fired first guilty of murder. The same may be said as to all the intermediate firings; and as the evidence stands, I do not think it necessary to say how it would be in case the first person fired with little or no provocation. If, therefore, this party of soldiers when at the custom house were a lawful assembly and continued so until they fired, and their firing was not an actual unlawful abetment of each other to fire, nor evidence of it, they cannot be said in consideration of law to have killed those five persons or either of them, but it must rest on the evidence of the actual killing; and if so, neither of the prisoners can be found guilty thereof, unless it appears not only that he was of the party, but that he in particular did in fact kill one or more of the persons slain. That the five persons were killed by the party of soldiers or some of them, seems clear upon the evidence, and indeed is not disputed.

Some witnesses have been produced to prove that Montgomery killed Attucks; and Langford swears Killroy killed Gray, but none of the witnesses undertake to say, that either of the other prisoners in particular killed either of the other three persons, or that all of them did it. On the contrary, it seems that one of the six did not fire, and that another of them fired at a boy as he was running down the street, but missed him (if he had killed him, as the evidence stands, it would have been murder,) but the witnesses are not agreed as to the person who fired at the boy, or as to him who did not fire at all. It is highly probable, from the places where the five persons killed fell, and their wounds, that they were killed by the discharge of five several guns only. If you are upon the evidence satisfied of that, and also that Montgomery killed Attucks, and Killroy, Gray, it will thence follow that the other three were killed, not by the other six prisoners, but by three of them only; and therefore they cannot all be found guilty of it. And as the evidence does not show which three killed the three, nor that either of the six in particular killed either of the three, you cannot find either of the six guilty of killing them or either of them. If you are satisfied, upon the evidence given you, that Montgomery killed Attucks, you will proceed to inquire whether it was justifiable, excusable, or felonious homicide, and if the latter, whether it was maliciously done or not. As he is charged with murder, if the fact of killing be proved, all the circumstances of necessity or infirmity are to be satisfactorily proved by him, unless they arise out of the

evidence produced against him, for the law presumeth the fact to have been founded in malice until the contrary appears.

You will, therefore, carefully consider and weigh the whole of the evidence given you respecting the attack made upon the party of soldiers in general, and upon Montgomery in particular. In doing it, you will observe the rules I have before mentioned, and not forget the part that some of the witnesses took in this unhappy affair, and if, upon the whole, it appears to you that Montgomery was attacked in such a violent manner that his life was in immediate danger, or that he had sufficient reason to think it was, and he thereupon fired and killed Attucks for the preservation of his own life, it was justifiable homicide, and he ought to be acquitted. If you do not believe that was the case, but upon the evidence are satisfied that he was by that assembly assaulted with clubs and other weapons, and thereupon fired at the rioters and killed Attucks; then you ought to find him guilty of manslaughter only. But if, upon the evidence, you believe that Montgomery, without being previously assaulted, fired and killed Attucks; then you will find him guilty of murder. But you must know that if this party of soldiers, in general, were pelted with snowballs, pieces of ice and sticks, in anger, this without more amounts to an assault, not only upon those that were in fact struck, but upon the whole party; and is such an assault as will reduce the killing to manslaughter. And if you believe, what some of the witnesses have sworn, that

the people round the soldiers, and many of them armed with clubs, crowded upon the soldiers, and with the cry of, "Rush on, kill them, kill them, knock them over," did in fact rush on, strike at them with their clubs, and give Montgomery such a blow, as to knock him down, as some of the witnesses say, or to make him sally, or stagger, as others say, it will be sufficient to show that his life was in immediate danger, or that he had sufficient reason to think so.

It seems that a doctrine has of late been advanced, that soldiers, while on duty, may, upon no occasion whatever, fire upon their fellow subjects, without the order of a civil magistrate. This may possibly account for some of those who attacked the soldiers, saying to them, "You dare not fire, we know you dare not fire." But it ought to be known that the law doth not countenance such an absurd doctrine. A man by becoming a soldier doth not thereby lose the right of self-defence, which is founded in the law of nature. Where any one is, without his own default, reduced to such circumstances that the laws of society cannot avail him, the law considers him "as still, in that instance, under the protection of the law of nature." This rule extends to soldiers as well as others; nay, while soldiers are in the immediate service of the king, and the regular discharge of their duty, they rather come within the reason of civil officers and their assistants, and so are alike under the peculiar protection of the law.

If you are satisfied upon the evidence, that Killroy killed Gray, you will then inquire, whether it was

justifiable, excusable, or felonious homicide, and if the latter, whether it was with or without malice. If the attack was upon the party of soldiers in general, and in the manner I have just mentioned, as some of the witnesses say it was, it is equally an assault upon all, whether all were in fact struck, or not, and makes no material difference, as to their respective right of firing; for a man is not obliged to wait until he is killed, or struck, before he makes use of the necessary means of self-defence. If the blows with clubs were, by an enraged multitude, aimed at the party in general, each one might reasonably think his own life in danger; for though he escaped the first blow, he might reasonably expect more would follow, and could have no assurance that he should be so fortunate as to escape all of them.

Therefore, I do not see but that Killroy is upon the same footing with Montgomery; and your verdict must be the same as to both, unless what Hemmingway swears Killroy said, or the affray at the rope-walks, or both, materially vary the case. Hemmingway swears, that he and Killroy were talking about the town's people and the soldiers, and that Killroy said, "He never would miss an opportunity, when he had one, to fire on the inhabitants; that he had wanted to have an opportunity, ever since he landed." But he says he cannot remember what words immediately preceded or followed, or at what particular time the words were uttered, nor does he know whether Killroy was jocular or not. If the witness is not mistaken as to the words, the speech was, at least, very imprudent and foolish. However,

if Killroy, either in jest or in earnest, uttered those words, yet if the assault upon him was such, as would justify his firing and killing, or alleviate it so as to make it but manslaughter, that will not enhance the killing to murder. And though it has been sworn that Killroy, and other soldiers, had a quarrel with Gray and others, at the ropewalks, a few days before the fifth of March, yet it is not certain that Killroy then knew Gray, or aimed at him in particular. But if Gray encouraged the assault by clapping the assailants on their backs, as Hinckley swears he did, and Killroy saw this, and knew him to be one of those that were concerned in the affray at the ropewalks, this very circumstance would have a natural tendency to raise Killroy's passions, and throw him off his guard, much more than if the same things had been done by another person. In the tumult of passion the voice of reason is not heard, and it is owing to the allowance the law makes for human frailty, that all unlawful voluntary homicide is not deemed murder. If there be "malice between A and B, and they meet casually, A assaults B, and drives him to the wall, B, in his own defence, kills A, this is *se defendendo*, and shall not be heightened by the former malice into murder or homicide at large, for it was not a killing upon the account of the former malice, but upon a necessity imposed upon him by the assault of A." So, upon the same principle, where the assault is such as would make the killing but manslaughter, if there had been no previous quarrel, the killing ought to be attributed to the assault, unless the evidence clearly shows the contrary; an

assault being known and allowed by law to be a provocation to kill, that will free the party from the guilt of murder; whereas neither words of reproach, nor actions expressive of contempt, "are a provocation to use such violence," that is, the law doth not allow them to be, without an assault, such a provocation as will excuse the killing, or make it any thing less than murder. Upon the same principle, where the assault is such as makes the killing manslaughter, the killing ought to be attributed to the assault, unless the evidence clearly shows the contrary.

This meeting of Killroy and Gray was casual upon the part of Killroy at least; he was lawfully ordered to the place where he was, and had no right to quit his station without the leave of Captain Preston, nor were any of the party obliged to retreat and give way to the rioters, but might lawfully stand and repel force by force.

It is needless for me to say what you ought to do with regard to the other six prisoners, in case they had gone to the custom-house, not to protect the sentry, but to disturb the peace, or after they got there, and before the firing, had agreed so to do; or, in case they had actually unlawfully abetted the killing; because none of these things have been testified, nor can any of them be deduced from any thing which has been given to you in evidence.

Having already said much more upon this occasion, than I should have thought necessary in a like case, at any other time, I shall add no more.

Each of the other justices also summed up the evidence to the jury very particularly, and gave their opinions of the construction of law upon the evidence, but they differed in no material point from Mr. Justice Trowbridge, who, according to the custom of the court, spoke first. The jury withdrew for about two hours and a half, and then returned into court, with a verdict of not guilty as to all the prisoners, except Killroy and Montgomery, who were found not guilty of murder but guilty of manslaughter. They prayed the benefit of clergy,[1] which was allowed them, and thereupon they were each of them burnt in the hand, in open court, and were discharged.

[1] Benefit of clergy was a privilege of clergymen, originating in a pious regard for the church, by which the clergy of Catholic countries were either partially or wholly exempted from the jurisdiction of the ordinary legal tribunals. It extended in England only to the case of felony; and, though it was intended to apply only to clerical persons or clerks, yet, as the being able to read was, by the laws of England, considered as sufficient evidence of the clerical character, when the rudiments of learning came to be diffused, almost every man in the community became entitled to this privilege. A person entitled to the benefit of clergy was formerly handed over to the ecclesiastical tribunals for trial. But this giving rise to great abuses, the secular judges ordered those who were entitled to the benefit of clergy to be detained in prison until they should be pardoned by the king. By a statute passed in the reign of Queen Elizabeth, persons convicted of felony and entitled to the benefit of clergy were to be discharged from prison, being first branded in the thumb; if laymen, it was discretionary with the judge to detain them in prison not exceeding one year. At the time of the trial of the British soldiers, manslaughter was within the benefit of clegy, and the punishment was for the offender to be burnt in the hand, and forfeit all his goods and chattels. This punishment was altered in the reign of George IV., to transportation for life, or for a term of years; or imprisonment for a term not exceeding three years.

On the twelfth of December following, Edward Manwarring, esquire, John Munroe, gentleman, Hammond Green, boat-builder, and Thomas Greenwood, laborer, were put upon trial on the charge of being present aiding and assisting in the murder of the citizens who were killed on the fifth of March. The evidence on the part of the crown tended to show that the defendants, or a part of them, fired on the crowd from the custom-house windows at the same time that the soldiers fired in the street. But the principal witness, Charles Bourgat, a French boy and servant of Manwarring, was contradicted in every material point, so that his evidence was not considered worthy of the slightest credit. The jury acquitted all the prisoners without leaving their seats.

Thus terminated the judicial proceedings in relation to the "Boston Massacre." In the midst of an excitement unparalleled in the history of our country, and in a community where they were regarded with such abhorrence, that they were only saved from summary punishment by the judicious efforts of the friends of law and order, the soldiers had a fair trial, the result of which has stood the test of time and the examination of impartial history. To many calm and rational minds it was not satisfactory, and by the people in general it was bitterly reproved as a gross departure from strict justice and an impartial administration of the law.[1] The nature and extent of the

[1] A few days after the trial, while the court was still in session, an incendiary paper was posted up, in the night, on the door of the town house, complaining of the court for cheating the injured peo-

feeling against the soldiers can scarcely be appreciated at the present day. The people had been misrepresented, wronged, and grievously oppressed. The peace of the town had been destroyed, and the quartering of soldiers in it was regarded as a bitter insult to the inhabitants. When, therefore, unarmed citizens were killed in the public streets, all the feelings of bitterness, hatred and revenge, which, until then, had been partially at least restrained from action, were directed towards the unhappy wretches who were to be tried for their lives. The press teemed with vigorous denunciations of their conduct. They were branded throughout the whole country as murderers; and even the pulpit fulminated its thunders against them. "Some have whispered a suspicion," was the language of the senior minister of the town, previous to the trial, "that a reprieve from death would be granted, should the guilt of blood be fastened upon some who are supposed to have been actors in this horrid wickedness.[1] But it is a high indignity offered to him who has the power of giving a reprieve, so much as to suspect that he would do it, in the case of blood-guiltiness clearly proved upon any in consequence of a fair and impartial trial."

ple with a show of justice, and calling upon them to rise and free the world from such domestic tyrants. It was taken down in the morning, and carried to the court, who were much disturbed, and applied to the lieutenant governor, who laid it before the council, and a proclamation was issued. Hutchinson.

[1] From a statement in Hutchinson, vol. iii. p. 329, it is apparent that the soldiers would have been pardoned, if they had been convicted of murder. It was even contemplated to omit the burning in the hand.

Notwithstanding this unfavorable condition of the public mind, the soldiers were fairly tried; justice triumphed, and the friends of freedom were saved from the lasting reproach of sanguinary proceedings against defenceless men, who had cast themselves upon the civil power for protection. The result gained for the friends of freedom the respect of the world, and no single occurrence did more to advance the cause of truth and just principles, than what was denominated in the language of that day the Boston Massacre. It caused the immediate withdrawal of the troops from the town of Boston, and the people, feeling that something had been gained, received new confidence in the determination to resist the encroachments of arbitrary power and mistaken policy. It was determined by the town to celebrate the anniversary of the fifth of March, to the end that there might be an annual development of the "fatal effects of the policy of standing armies, and the natural tendency of quartering regular troops in populous cities in times of peace."[1] On the day of the first cele-

[1] The language of Josiah Quincy, Jun. in the Boston Gazette, February, 1771. The anniversary was observed every year until 1784. The names of the orators in their order were James Lovell, Dr. Joseph Warren, Dr. Benjamin Church, John Hancock, Dr. Joseph Warren, Rev. Peter Thacher, Benjamin Hichborn, Jonathan W. Austin, William Tudor, Jonathan Mason, Jun., Thomas Dawes, Jun., George Richards Minot, Dr. Thomas Welsh. Dr. Warren fell at the battle of Bunker hill. The oration of Rev. Peter Thacher was delivered in 1776, when Boston was garrisoned by British troops, and the inhabitants were in the country, which occasioned the oration to be delivered at Watertown. Tradition says, that the oration of John Hancock was written by Dr. Samuel Cooper. The "Boston Orations" were collected in a volume in 1785 by Peter Edes.

bration, the bells of the town of Boston were tolled from twelve to one o'clock, at noon, and from nine to ten in the evening, and, during the last, figures to represent the murder of the inhabitants were exhibited from a window of a distinguished citizen at the north part of the town. On the recurrence of this anniversary until after the independence of the country was firmly established, the day was always observed in a solemn and striking manner. An oration was delivered by public request, when the orators took occasion to illustrate and enforce the great principles of civil and religious liberty, and the people of Boston were thus prepared for those acts of spirited and determined resistance to the encroachments of the crown, which placed them in the foremost rank of the patriots of that day, and covered the names of some of their number with imperishable fame.

APPENDIX.

SKETCH OF WILLIAM STOUGHTON.

William Stoughton, the first chief justice of the province of Massachusetts, was born in Dorchester in 1631, and was graduated at Harvard College in 1650. He was educated for the ministry, and after completing his course of studies here, went to England and, while there, enjoyed a fellowship at the Oxford University. During his remaining in England he preached for some time in the county of Sussex, with considerable success, and continued this employment after his return to New England. He acquired a high reputation as a preacher here, and in 1668, was chosen to preach the annual election sermon. He chose for the title of his sermon on that occasion "New England's true interest not to lie," and it was pronounced by a cotemporary to be "among the very best delivered on that occasion." He returned from England in 1662, and although he continued to preach until 1671, he was never settled over any church.

The occasion of his discontinuing his clerical engagements was his election to the office of assistant, which place he held by annual reëlection until the dissolution of the colonial government in 1686. During this period, however, he was absent in England as agent of the colony, a part of the time, having been chosen to that responsible office in 1677. Upon the revocation of the old charter, Stoughton was commissioned under Dudley as deputy president of Massachusetts, and in July, 1686, was placed at the head of the courts of the colony, by order of the president and council, which

office he held until the arrival of Andros. In the commission to Andros, Stoughton was named as one of his council, and unfortunately for his popularity he consented to accept the office, and thereby lost the confidence of the people, while he failed to gain that of the petty tyrant whom he served. In the new organization of the courts, under Andros, he was placed upon the bench of the superior court, but in a subordinate place to Dudley, the late president, who was made chief justice of the court. With his accustomed sagacity or good fortune, Stoughton was found among the foremost of those who favored the revolution of 1689. His name stands at the head of those who demanded of Andros a surrender of the government, and he was one of the council of safety[1] who assumed the administration until the people had an opportunity of acting upon the subject.

The people however had not sufficiently regained their confidence in his political integrity to give him any place in the government, upon their resuming the old charter, and, until the arrival of the new charter, he seems to have been condemned to the walks of private life. The interval of his retirement from office, however, was short, for upon the granting of the new charter he was appointed lieutenant governor of the province, and from that time till his death filled some of the most important offices in the government.

Upon the arrival of Sir William Phipps in 1692, he proceeded to constitute a special court of oyer and terminer for the trial of persons accused of witchcraft. It was to consist of five judges, and at the head of these was placed William Stoughton. On no individual does the responsibility of the sad consummation of that excitement rest more heavily than on William Stoughton. On the organization of the superior court under the charter, Stoughton was nominated and unanimously approved by the council as chief justice of that court. He held the office until a short time before his death. During this time he also continued to hold the offices of lieutenant governor and counsellor, and, a part of the time, was commander in chief of the province troops. He erected in his lifetime a building for the accommodation of the students of Harvard College, which was taken down in 1780, "being an unsubstantial piece of masonry." In 1806, a substantial brick building being

[1] So stated in Washburn's Judicial History of Massachusetts, from which this account is principally derived. But see Quincy's History of Harvard University, i. 176.

erected by the corporation, the name of Stoughton was given to it. He died at the age of seventy years, greatly lamented, and was buried at Dorchester "with great honor and solemnity and with him much of New England's glory." A Latin epitaph records his virtues, his honors and his name, and still points out his grave in the ancient churchyard of that ancient town.

THE PROFESSIONAL LIFE OF JOHN ADAMS.

The political history of John Adams, the second president of the United States, is too familiar to the general reader to require any notice in this place. His professional career and character are less known. He was graduated at Harvard College in 1755, and studied law with James Putnam, of Worcester, where he was employed for a time in teaching a school. Admitted to the bar in 1758, he commenced the practice of his profession in Braintree, his native town. In 1765, he removed to Boston. He early engaged in the political struggles of that day, and was far in advance of his contemporaries in zeal for the popular cause. Notwithstanding his private feelings, he was retained as counsel for the British soldiers in 1770, and defended them with a spirit and ability, which mainly contributed to the just results of those famous trials, and has redounded to his own honor and to that of the profession to which he belonged.

Mr. Adams was actively engaged in professional pursuits until 1775. He attended the courts at Falmouth (now Portland) in Maine for twelve successive years before the revolution. He was an intimate friend of Jonathan Sewall, a distinguished lawyer of Boston, until the crisis took place in American affairs. It was while they were at Falmouth in July, 1774, that the separation between them took place They were walking, before breakfast, on the hill at the eastern extremity of the town, conversing upon the alarming condition of the country and its future prospects. Neither could convince the other that his views were erroneous, and they resolved never to converse on the subject any more. Mr. Adams, at that time and under those circumstances, uttered the well known exclamation, "sink or swim, live or die, survive or perish, with my country is my unalterable resolution." He terminated the deeply interesting conversation by saying; "I see we

must part, and with a bleeding heart I say it, I fear forever; but you may depend upon it, that this adieu is the sharpest thorn on which I ever set my foot." Sewall retired to England in 1775, and Mr. Adams did not meet him again until he called on him in London, in 1788, as the ambassador of the United States. While on the same circuit in Maine, Mr. Adams wrote to his wife as follows: "My life has been a continual scene of fatigue, vexation, labor and anxiety. I have four children. I had a pretty estate from my father; I have been assisted by your father; I have done the greatest business in the province. I have had the richest clients in the province. Yet I am poor, in comparison with others. This, I confess, is grievous and discouraging. I ought however to be candid enough to acknowlege that I have been imprudent. I have spent an estate in books; I have spent a sum of money indiscreetly in a lighter, another in a pew, and a much greater in a house in Boston. These would have been indiscretions, if the impeachment of the judges, the Boston port bill, &c. &c., had never happened; but by the unfortunate interruption of my business from these causes, those indiscretions became almost fatal to me; to be sure, much more detrimental. John Lowell, at Newburyport, has built himself a house like the palace of a nobleman, and lives in great splendor. His business is very profitable. In short, every lawyer who has the least appearance of abilities, makes it do in the country. In town, nobody does, or ever can, who either is not obstinately determined never to have any connexion with politics, or does not engage on the side of the government, the administration, and the court. Let us, therefore, my dear partner, from that affection which we feel for our lovely babes, apply ourselves, by every way we can, to the cultivation of our farm. Let frugality and industry be our virtues, if they are not of any others. And above all cares of this life, let our anxiety be, to mould the minds and manners of our children. Let us teach them not only to do virtuously, but to excel. To excel, they must be taught to be steady, active, and industrious."

In 1774, Mr. Adams was appointed a delegate to the first continental congress, and in 1775 he was appointed chief justice of Massachusetts. He was detained, however, in a more extended field of public usefulness, and never actually performed any of the duties of his office as judge, and resigned the place the following year. From that time his connection with the judiciary ceased. He afterwards filled the highest office in the nation, and died July 4, 1826, at the age of ninety. Mr. Adams was of a middling stature and a full person; his manner of speaking was generally slow

and deliberate, but when excited, he expressed himself with great energy and effect. His mind was strong, his learning accurate and extensive, his ability as a speaker and a writer of a very high order, and his character in private life was above reproach. *American Jurist*, xxv. 65; *Letters of John Adams to his wife* i. 6; *Law Reporter*, iii. 44.

SKETCH OF JOSIAH QUINCY, JUN.

Josiah Quincy, jun., was the son of Josiah Quincy, a merchant in Boston, who, having acquired a handsome fortune, retired to Braintree, the seat of his ancestors. His son Josiah was gaduated at Harvard College in 1763. In the same year he commenced the study of the law with Oxenbridge Thacher, Esq. of Boston, one of the most eminent lawyers of that period. Mr. Thacher died in July, 1765. Mr. Quincy remained in the office during the residue of his student's term, took a general oversight of its concerns, and, on entering his professional career, succeeded to an extensive practice, which his talents, diligence, and fidelity, in a great measure, secured to himself. His industry while a student, and during the first years of his profession, is proved by several manuscript volumes, in his own hand, consisting of "Reports of cases and points of law, solemnly adjudged in the Supreme Court of the Province," part of which are original, and part copied from the minutes of eminent lawyers.

The arguments of Auchmuty, Thacher, Gridley, Otis, Adams, and other distinguished lawyers, with the cases cited, in various important questions, are here abstracted and preserved.

On commencing the practice of the law, he early became distinguished for the zeal with which he engaged in the service of his clients, and the learning and eloquence of his arguments both to the court and jury. Otis, Adams, Sewall, and the other great luminaries of the bar at that period, were by many years his seniors. His practice, however, soon became extensive, and his high rank as a lawyer was acknowledged by his contemporaries. Although his attachment to professional pursuits was strong, and his attention to his business unremitting, yet the political circumstances f the times were of a character to call into immediate action that love of country, which was the deep-seated passion of his soul.

Mr. Quincy became one of the most ardent, influential, and fearless patriots of that day. His efforts in the cause of liberty, and his personal history, are minutely and graphically described in his memoirs by his son, Josiah Quincy. He died at the age of thirty-one, in April, 1775, at sea, near Cape Ann, on his return from a sea voyage, "within sight of that beloved country which he was not permitted to reach. He expired, not as, a few weeks afterwards, did his friend and copatriot, Warren, in battle, on a field ever memorable and ever glorious, but in solitude, amidst suffering, without associate, and without witness; yet breathing forth a dying wish for his country, desiring to live only to perform towards her a last and signal service."

Mr. Quincy was of counsel for the British soldiers engaged in the "Boston Massacre." The following extracts from a correspondence, which parental affection and anxiety induced Mr. Quincy's father to commence, will indicate the nature and extent of the sentiment prevalent at that period on the subject.

To Josiah Quincy, jun., Boston.

"Braintree, March 22, 1770.

"My dear Son,

"I am under great affliction, at hearing the bitterest reproaches uttered against you, for having become an advocate for those criminals who are charged with the murder of their fellow-citizens. Good God! Is it possible? I will not believe it.

"Just before I returned home from Boston, I knew, indeed, that on the day those criminals were committed to prison, a sergeant had inquired for you at your brother's house, — but I had no apprehension that it was possible an application would be made to you to undertake their defence. Since then I have been told that you have actually engaged for Captain Preston; — and I have heard the severest reflections made upon the occasion, by men who had just before manifested the highest esteem for you, as one destined to be a savior of your country.

"I must own to you, it has filled the bosom of your aged and infirm parent with anxiety and distress, lest it should not only prove true, but destructive of your reputation and interest; and I repeat, I will not believe it, unless it be confirmed by your own mouth, or under your own hand.

"Your anxious and distressed parent,

"Josiah Quincy."

To Josiah Quincy, Esq., Braintree.

"Boston, March 26, 1770.

"Honored Sir,

"I have little leisure, and less inclination either to know, or to take notice of, those ignorant slanderers, who have dared to utter their 'bitter reproaches' in your hearing against me, for having become an advocate for criminals charged with murder. But the sting of reproach, when envenomed only by envy and falsehood, will never prove mortal. Before pouring their reproaches into the ear of the aged and infirm, if they had been friends, they would have surely spared a little reflection on the nature of an attorney's oath, and duty; — some trifling scrutiny into the business and discharge of his office, and some small portion of patience in viewing my past and future conduct.

"Let such be told, sir, that these criminals, charged with murder, are *not yet legally proved guilty*, and therefore, however criminal, are entitled, by the laws of God and man, to all legal counsel and aid; that my duty as a man obliged me to undertake; that my duty as a lawyer strengthened the obligation; that from abundant caution, I at first declined being engaged; that after the best advice, and most mature deliberation had determined my judgment, I waited on Captain Preston, and told him that I would afford him my assistance; but, prior to this, in presence of two of his friends, I made the most explicit declaration to him, of my real opinion, on the contests (as I expressed it to him) of the times, and that my heart and hand were indissolubly attached to the cause of my country; and finally, that I refused all engagement, until advised and urged to undertake it, by an Adams, a Hancock, a Molineux, a Cushing, a Henshaw, a Pemberton, a Warren, a Cooper, and a Phillips. This and much more might be told with great truth, and I dare affirm, that you, and this whole people will one day REJOICE, that I became an advocate for the aforesaid 'criminals,' *charged* with the murder of our fellow-citizens.

"I never harbored the expectation, nor any great desire, that all men should speak well of me. To inquire my duty, and to do it, is my aim. Being mortal, I am subject to error; and conscious of this, I wish to be diffident. Being a rational creature, I judge for myself, according to the light afforded me. When a plan of conduct is formed with an honest deliberation, neither murmuring, slander, nor reproaches move. For my single self, I consider, judge, and with reason hope to be immutable.

"There are honest men in all sects, — I wish their approbation; — there are wicked bigots in all parties, — I abhor them.

"I am, truly and affectionately, your son,

"JOSIAH QUINCY, JUN."

TRIALS FOR WITCHCRAFT.

Many curious and valuable documents relating to the trials for witchcraft at Salem, in 1692, are still preserved, although in an imperfect condition. Some of them are in the archives of the commonwealth, but more are in the office of the clerk of the courts for Essex. It is believed that the original record book of these trials is lost. A copy of it was made several years ago for Ichabod Tucker, Esq., of Salem, but this also is lost or misplaced. Every thing relating to these trials possesses an interest, and several of the documents have been copied for insertion in this work. They will be found to be interesting as throwing light not only upon these trials, showing to some extent the forms of judicial proceedings at that day, but they also exhibit the condition of the public mind, and give striking proof of affecting and impassioned eloquence, and display the energies of humble minds powerfully excited by the consciousness of being placed in momentous extremities. The author deems it proper, in this place, to express his grateful acknowledgements to Mr. Shillaber, clerk of the courts in the county of Essex, and to that laborious and intelligent antiquarian, Mr. J. B. Felt, of Boston, for the facilities which they have afforded him in his investigations.

FORM OF WARRANT FOR THE ARREST OF PERSONS SUSPECTED OF WITCHCRAFT.

To the marshall of Essex or deputy or constables in Salem:

You are in their majesties' names hereby required to apprehend and forthwith to bring before us, Benjamin Procter, the son of John Procter, of Salem, farmer, and Mary Derich, the wife of William Derich of Salem, farmers and husbandmen, and Sarah Pease, the wife of Robert Pease, of Salem, weaver, who all stand charged of having committed sundry acts of witchcraft on the bodys of Mary Warren, Abigail Williams and Eliza Hurlbert of Salem village, whereby great hurt is donne them. In order to their examination

relating [to] the above said premises, and hereof you are not to fail. Dated Salem, May the 23d, 1692.

JOHN HATHORNE,
JONATHAN CORWIN.

Per order of the Governor and council.

I do appoint Mr. John Putnam to be my lawful deputy to serve this warrant.

GEO. HERRICK, Marshall of Essex.

EXAMINATION OF MARY BLACK.

The examination of Mary Black, (a negro) at a court held at Salem village 22 April, 1692. By the magistrates of Salem.

Mary, you are accused of sundry acts of witchcraft: Tell me be you a witch?

—— silent.

How long have you been a witch?

I cannot tell.

But have you been a witch?

I cannot tell you.

Why do you hurt these folks?

I hurt nobody.

Who doth?

I do not know.

Her master, saith a man sat down upon the farm with her about a twelvemonth ago.

What did the man say to you?

He said nothing.

Doth this negroe hurt you?

Severall of them said yes.

Why do you hurt them?

I did not hurt them.

Do you prick sticks?

No, I pin my neckcloth.

Well, take out a pin and pin it again.

She did so, and severall of the afflicted cried out they were prick't. Mary Walcott was prick't in the arm till the blood came, Abigail Williams was prick't in the stomach and Mercy Lewis was prick't in the foot.

Mr. Samuel Parris being desired to take in writing the examination of Mary Black, a negro woman, delivered it as aforesaid. And upon hearing the same and seeing what we did then see together

with the charge of the afflicted person then present, we committed said Mary Black.

JOHN HATHORNE, } Assis'ts.
JONATHAN CORWIN, }

WARRANT FOR JURY.

To George Corwin, Gent. Sheriff of the County of Essex. Greeting.

You are required in their Majesties names to publish and give notice within your Bailiwicke in the best manner you can of the sitting of their majesties Justices upon a Commissioner of Oyer and terminer at the Town of Salem upon Tuesday next the second of June next at Eight in the morning, for the tryal of all Crimes and offences done and perpetrated within the s-d County, requiring all persons concerned as prosecutors or evidences to give their attendance; and to return eighteen honest and lawfull men of y'r Bailowick to serve upon the Jury of tryals at the said Court, hereof faile not Dated in Boston, May 30th, 1692. In the ffourth year of their ma'ties Reign.

WILLIAM STOUGHTON,
SAM'L SEWALL.

DEATH WARRANT OF BRIDGET BISHOP. (See p. 97.)

To George Corwin Gent'n high Sheriffe of the County of Essex. Greeting.

Whereas Bridgett Bishop als Olliver the wife of Edward Bishop of Salem in the County of Essex Sawyer at a special Court of Oyer and Terminer held at Salem the second day of this instant month of June for the Countyes of Essex, Middlesex and Suffolk before William Stoughton, Esq. and his Associate Justices of the said Court was Indicted and arraigned upon five severall Indictments for useing, practising and exercising on the nyneteenth day of April last past and divers other dayes and times before and after certaine acts of Witchcraft in and upon the bodyes of Abigail Williams, Ann Putnam Jun Mercy Lewis, Mary Walcot and Elizabeth Hubbard of Salem village, singlewomen, whereby their bodyes were hurt, afflicted, pined, consumed, wasted and tormented contrary to the forme of the statute in that Case made and provided. To which Indictm'ts the said Bridgett Bishop pleaded not guilty and for Tryall thereof put herselfe upon God and her Country,

whereupon she was found guilty of the ffelonyes and Witchcraft whereof she stood Indicted and sentence of Death accordingly passed ag't her as the Law directs, Execution whereof yet remaineth to be done. These are therefore in the name of their Maj'ties William and Mary now King and Queen over England, &c. to will and Comand you That upon ffryday next being the Tenth Day of this instant month of June between the houres of Eight and twelve in the aforenoon of the same day you safely conduct the s'd Bridgett Bishop als Olliver from their maj'ties Gaol in Salem afores'd to the place of Execution and there cause her to be hanged by the neck untill she be dead and of your doings herein make returne to the Clerke of the s'd Court and prept. And hereof you are not to faile Given vnder my hand and Seale at Boston the Eighth day of June in the ffourth year of the Reigne of our Sovereign Lord and Lady William and Mary now King and Queen over England &c Annoq Dm: 1692.

WM. STOUGHTON.

June 10th, 1692.

According to the Within Written precept I have taken the body of the within named Bridgett Bishop out of their Majesties Gaole in Salem and safely conveighed her to the place provided for her Execution and Caused y'e s'd Brigett to be hanged by the neck untill she was dead *and buried in the place* [the words in italics are partly erased] all which was according to the time Within Required and So I make Returne by me.

GEORGE CORWIN, Sheriff.

INDICTMENT OF WILLIAM BARKER.

Province of Massachusetts Bay. Essex, ss. in New England. } Anno R. R. & Reginæ Gulielmi & Mariæ Anglicæ, &c. Quarto Annoque Dom. 1692.

The jurors for our sovereign Lord and Lady, the King and Queen, present, that William Barker, of Andover, in the county of Essex, aforesaid, husbandman, about three years last past, in the township of Andover, aforesaid, wickedly, maliciously, and feloniously, by a covenant with the Devill, did make and did sign the Devill's Booke with blood, and gave himself, soule and body, to the Devill. By which wicked and diabolical covenant with the Devill, made in manner and form aforesaid, the said William Barber is become a detestable witch, against the peace of our sovereign Lord and Lady, the King and Queen, their crowne and dignity, and the law, in that case made and provided.

(Endorsed) Billa Vera.

ROBERT PAYNE, Foreman.

INDICTMENT OF SAMUEL WARDELL. (See p. 121.)

Essex, in the province of the Massachusetts bay, in New England, ss. } Ano. RRs. & Reginæ Gulielmi & Mariæ, Angliæ, &c. Quarto, Anoq. Dom. 1692.

The Jurors for our sov. Lord & Lady, the King & Queen, present Samuel Wardell, of Andover, in the County of Essex, Carpenter About Twenty Years agoe in the Towne of Andover, In the County of Essex aforesaid Wickedly & felloniously he the Said Samuel Wardell with the Evill Speritt the Devill A Couenant did make Wherin he promised to honor Worship & beleiue the devill Contrary to the Stattute of King James the first in that behalfe made & provided, And against the peace of Soveraigne Lord & Lady the King & Queen, their Crown & dignity.

FORMS OF DEPOSITIONS.

The deposition of Mercy Lewis, aged about eighteen years or thereabouts, testifieth and saith, that on the twenty-sixth day of this instant, May, that Goody Reed, of Marblehead, did pinch her, and she hath seen her severall times since, but she could not say she hurt her: and further saith nott.

The Deposition of Sam: Parris aged about 39 years, & John Putman, sen. aged about 63 years, both of Salem Village, testifyeth and saith, that this 18 instant, June, being at the house of Jonathan Putman whom we found very ill, after a little while Mercy Lewis, sent for on purpose, came into said Jonathan Putman's house, & was presently struck dumb, but being bid to hold up her hand if she saw any of the witches afflict said Jonathan, whereupon she presently lift up her hand, & after fell into a Trance, & when said Mercy came to her self, she said she saw Goody Nurse & Goody Currier holding said Jonathan's head, and farther saith not.

Jurat in Curia.

RETURN OF A JURY OF EXAMINATION. (See p. 94.)

1692. Salem June 2d aboute 10 in Morning.

Wee whose names are Vnder written, being Comanded by Capt. George Corwine Esq. Sheriffe of y'e County of Essex this 2d day of June 1692 for to vew y'e bodyes of Brigett Bishop alias Oliver, Rebeccah Nurse, Elizabeth Procter, Alice Parker, Susanna Martine, Sarah Good. The first three, namely; Bishop; Nurse; Proc-

ter; by diligent search have discouered a preternaturall Excrescence of flesh betweene y'e pudendum and Anus much like to tetts & not vsuall in women, & much Vnlike to y'e other three that hath been searched by vs & y't they were in all y'e three women neer y'e same place.

J. BARTON, Chyrurg.

ALICE ⋈ PICKERING,
her marke.

JANE ⋈ WOOLINGS,
her marke.

MARGERY ⋈ WILLIAMS,
her marke.

ANNA ⋈ STEPHENS,
her marke.

ELIZABETH ⋈ HILL.
her marke.

ELANOR ⋈ HENDERSON.
her marke.

REBECAH ⋈ SHARP,
her marke.

LYDIA ⋈ PICKMAN.
her marke.

HANNAH KEZIER.

Sworne in Court, June 2d, 1692.

Att. STEP: SEWALL, Cle.

Salem, aboute 4 afternoon, June 2d, 1692.

We whose names are subscribed to y'e within mentioned, upon a second search aboute 3 or 4 houres distance, did find y'e said Brigett Bishop alias Oliver, in a clear & free state from any preternaturall Excrescence, as formerly seen by vs as alsoe Rebecah Nurse, instead of that Excresence within mentioned, it appears only as a dry skin, without sener, & as for Elizabeth Procter which Excresence like a tett Red & fresh, not any thing appears, but only a proper procedentia Anj, & as for Susanna Martine whose breast in y'e morning search appeared to vs very full; y'e niblis fresh & starting, now at this Searching all Lancke & pendant, which is all at present from y'e within mentioned Subscribers, that that piece of flesh of Goodwife Nursys formerly seen is gone & only a dry skin nearer to y'e anus in another place.

[Signed as above.]

PETITION OF REBECCA FOX.

To his excellency Sir Williams Phips, Knt. governor, and the honorable council now sitting at Boston, the humble petition of Rebecca Fox of Cambridge, showeth, That whereas Rebecca Jacobs (daughter of your humble petitioner) has a long time, even many months now lyen in prison for witchcraft, and is well known to be a person craz'd, distracted and broken in mind, your

humble petitioner does most humbly and earnestly seek unto your excellency and to your honors for relief in this case.

Your petitioner, who knows well the condition of her poor daughter, together with several others of good repute and credit, are ready to offer their oaths, that the said Jacobs is a woman craz'd, distracted, and broken in her mind, and that she has been so these twelve years and upwards.

However, for (I think) about this half year the said Jacobs has lyen in prison, and yet remains there attended with many sad difficulties.

Christianity and nature do each of them oblige your petitioner to become solicitous in this matter, & although many weighty cases exercise your thoughts, yet your petitioner can have no rest in her mind, till such time as she has offered this addresse on behalf of her daughter.

Some have dyed already in prison, & others have been dangerously sick, & how soon others & among them my poor child by the difficulties of this confinement, may be sick & dye, God only knows: She is incapable of making that shift for herself that others can do, & such are her circumstances on other accounts that your petitioner who is her tender mother has many secret sorrows & almost overcoming burthens on her mind upon her account, but in the midst of all her perplexities & troubles (next to supplicating to a good & merciful God) your petitioner has no way for help but to make this her afflicted condition known unto you. So not doubting but your excellency and your honors will readily hear the cries & groans of a poor distressed woman & grant what help & enlargment you may, your petitioner heartily begs God's gracious presence with you & subscribes herself in all humble manner,

Your sorrowful & distressed petitioner,

REBECCA FOX.

PETITION OF ANN PUDEATER. (See p. 121.)

The humble Petition of Ann Pudeater unto y'e honoored Judge and Bench now setting in Judicature in Salem humbly sheweth:

That Whereas your Poor and humble Petitioner being condemned to die, and knowing in my own conscience as I shall shortly answer it before y'e great God of heauen who is the searcher and knower of all hearts: That the Euidence of Jno Best Sen and Jno Best Jun'r and Sam'lt Pickworth w'h was giuen in against me in Court were all of whom altogether false and untrue and besides

the abouesaid Jno Best hath been formerly whipt and likewise is recorded for A Lyar I would humbly begg of yo'r honors to Take it into your Judicious and Pious consideration That my life may not be taken away by such false Euidences and witnesses as those be likewise y'e Euidence giuen in against me by Sarah Church and Mary Warren I am altogether ignorant off and know nothing in y'e least measure about it nor nothing else concerning y'e crime of witchcraft for w'ch I am condemned to die as will be known to men and angells att the great day of Judgment begging and imploring your prayers att the throne of grace in my behalf and your poor and humble petition'r shall for euer pray as she is bound in duty for y'r honors health and happiness in this life and eternall felicity in y'e world to come.

GEORGE BURROUGHS.

(See page 114.)

Forasmuch as its made manifest that y'e children of Mr. George Burroughs Dece'd by his former wiews did in y'e time of his Imprisonment administer vnto him necessary things and were at considerable charge thereabout and for his interment and that y'e widow had most or all of y'e personal Estate. In Consideration Whereof Wee y'e Subscribers a Comittee apointed by y'e Generall Court do Consent agree and order that the Six pounds 6'd money yet remain'g of y'e fifty pounds alowed by y'e Gouernment Shall be payd to y'e s'd Children in Equal Shares.

January 3d, 1712.

JOHN APPLETON,
THOMAS NOYES,
STEPHEN SEWALL,
NEH. JEWETT.

Boston April y'e 9:

'Honnoured Sir: the fauour which i would humbly ask of your honnour at this time is that you would please to let my brother George Burrough haue what remains in your hands on the account of my deceased but Honnoured father Mr. George Burrough. Sir my request is, that it may be don without delay for euery disscourse on this melancholly Subiect doth giue a fresh wound to my bleeding hart but i desire to sit down in silence and remain sir your Honnours most obedient seruant REBEKAH: TOWLE:

PETITION OF MARY TOWNE.

To the Honored Court now sitting in Salem Right Honored: the constable of Topsfield hath served a warrant on me and two of my sons and two of my sisters to Appear this day at Salem. I humbly beg that your honor will not impurt any thing concerning our not coming as contempt of authority for [several lines illegible] We would come but we are in a starving condition and most of us can scars get of of our bedds we are so wake an not a bell to [illegible]: as for my dalter Rebaka she hath starving fits some times she is knocked down of a soden:

MARY TOWNE.

Dat. the 7th of September, 1692.

ADVICE OF THE ELDERS RESPECTING THE QUAKERS.

[From the original in the State Archives.]

The Elders being called to attend the honored General Court at a session held in Boston Nov. 27, 1661, have unto certain quæres, then and there proposed to them, returned their apprehensions as followeth:

Quære 1. Whether the execution of our laws referring to the punishment of the Quakers, as such, shall be suspended pro tempore, or what else to be done therein?

Ans. Upon his majesties letters [see p. 52] we conceive it expedient that execution of death or corporal punishment according as is expressed therein be suspended pro tempore. Provided that some effectual course be also taken in the interim for the restraint of turbulencies in church or state which the king's warrant to our apprehension no ways inhibits, but rather encourageth thereunto.

Quære 2. Whether the Quakers in prison should be sent for England with their accusations, or otherwise released out of prison.

Ans. We think it much better that the Quakers in prison, should be sent for England with their accusations, than that they should be released out of prison.

Quære 3. Whether this Court is called to make an humble address by petition to his majesty in answer to his letters now brought concerning the said Quakers.

Ans. To this 3d quære we answer affirmatively.

Quære. Whether this Court will send any person or persons to solicit in the country's behalf?

Ans. We think this honored court shall do well to send some fit person or persons to solicit in the country's behalf.

Quære 5. Whether this court will raise any sum of money (and what) to furnish such person or persons, to manage our interests in England?

Ans. We think this honored court shall do well to raise a competent sum of money, according to the ability of this place to furnish such person or persons to manage our interests in England.

This was presented to the court by the reverend Mr. Mather in the name of the Elders as their return. 29, 9 mo. 1661.

PETITION OF WILLIAM DYER FOR THE LIFE OF HIS WIFE.

[From the original in the State Archives.]

(See p. 44.)

Honored Sir, — It is no little grief and sadness of heart that I am necessitated to be so bold as to supplicate your honorable self with the honorable assembly of your general court to extend your mercy and favor once again to me and my children. Little did I dream that ever I should have had occasion to petition you in a matter of this nature; but so it is, that through the divine providence and your benignity, my son obtained so much pity and mercy at your hands as to enjoy the life of his mother. Now my supplication to your honors is, to beg affectionately the life of my wife. 'Tis true I have not seen her about this half year, and therefore cannot tell how in the frame of her spirit she was moved thus again to run so great a hazard to herself and perplexity to me and mine, and all her friends and neighbors. So it is from Shell Island about by Pequid Narragansett and to the town of Providence she secretely and speedily journeyed, and as secretly from thence came to your jurisdiction. Unhappy journey may I say, and woe to that generation say I that gives occasion thus of grief and trouble to those who desire to be quiet, by helping one another (as I may say) to hazard their lives for I know not what end or to what purpose. If her zeal be so great as thus to adventure, oh let your favor and pity surmount it and save her life. Let not your forewonted compassion be conquered by her inconsiderate madness, and how greatly will your renown be spread if by so conquering you become victorious. What shall I say more? I know you are all sensible of my condition, and let the reflect be, and you will see what my petition is and what will give me and mine peace. Oh let mercy's wings once more soar above justice balance and then whilst I live shall I exalt your goodness. But otherwise, 'twill be a languishing sorrow, yea, so great that I should rather suffer the blow

at once, much rather. I shall forbear to trouble your honor with words. Neither am I in a capacity to expatiate myself at present. I only say that yourselves have been and are or may be husbands to wife or wives. So am I. Yea, to one most dearly beloved. Oh do not you deprive me of her, but I pray give her me once again, and I shall be so much obliged forever, that I shall endeavor constantly to offer my thanks, and render your love and honor most renowned. Pity me; I beg it with tears, and rest your most humble supplicant. Most honorable sir, let these lines by your favor be my petition to your honorable general court at yresent sitting.

W. DYER.

NOTE TO THE TRIALS OF THE QUAKERS.

On page 53 of the present volume it is stated that Ann Colman, Mary Tompkins, and Alice Ambrose were tied to a cart's tail in Dover and whipped, with ten stripes in each town, through eleven towns. The statement is not entirely accurate. According to the Quaker writers, a warrant to whip these women through eleven towns was made, but they admit that it was never fully executed, and that the women were in fact whipped through three towns only, which was in conformity to law. The warrant was as follows:

To the constable of Dover, Hampton, Salisbury, Newbury, Rowley, Ipswich, Wenham, Linn, Boston, Roxbury, Dedham, and until these vagabond Quakers are carried out of this jurisdiction.

You and every of you, are required, in the king's majesty's name, to take these vagabond Quakers, Ann Colman, Mary Tompkins, Alice Ambrose, and make them fast to the cart's tail, and driving the cart through our several towns, to whip them upon their backs, not exceeding ten stripes apiece, on each of them, in each town, and so to convey them from constable to constable till they come out of this jurisdiction, as you will answer it at your peril; and this shall be your warrant.

At Dover dated December 22, 1692.

Per me, RICHARD WALDEN.